Y4. EN2/3:99-78

NHTSA'S CONDUCT IN THE FORD TRANSMISSION CASE

COMPLETED

322

ORIGINAL

HEARING

BEFORE THE

SUBCOMMITTEE ON TELECOMMUNICATIONS, CONSUMER PROTECTION, AND FINANCE

OF THE

COMMITTEE ON ENERGY AND COMMERCE
HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

FIRST SESSION

AUGUST 1, 1985

Serial No. 99-78

Printed for the use of the Committee on Energy and Commerce

U.S. GOVERNMENT PRINTING OFFICE
60-152 O WASHINGTON : 1986

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

COMMITTEE ON ENERGY AND COMMERCE

JOHN D. DINGELL, Michigan, *Chairman*

JAMES H. SCHEUER, New York
HENRY A. WAXMAN, California
TIMOTHY E. WIRTH, Colorado
PHILIP R. SHARP, Indiana
JAMES J. FLORIO, New Jersey
EDWARD J. MARKEY, Massachusetts
THOMAS A. LUKEN, Ohio
DOUG WALGREN, Pennsylvania
BARBARA A. MIKULSKI, Maryland
AL SWIFT, Washington
MICKEY LELAND, Texas
RICHARD C. SHELBY, Alabama
CARDISS COLLINS, Illinois
MIKE SYNAR, Oklahoma
W.J. "BILLY" TAUZIN, Louisiana
RON WYDEN, Oregon
RALPH M. HALL, Texas
DENNIS E. ECKART, Ohio
WAYNE DOWDY, Mississippi
BILL RICHARDSON, New Mexico
JIM SLATTERY, Kansas
GERRY SIKORSKI, Minnesota
JOHN BRYANT, Texas
JIM BATES, California

JAMES T. BROYHILL, North Carolina
NORMAN F. LENT, New York
EDWARD R. MADIGAN, Illinois
CARLOS J. MOORHEAD, California
MATTHEW J. RINALDO, New Jersey
WILLIAM E. DANNEMEYER, California
BOB WHITTAKER, Kansas
THOMAS J. TAUKE, Iowa
DON RITTER, Pennsylvania
DAN COATS, Indiana
THOMAS J. BLILEY, Jr., Virginia
JACK FIELDS, Texas
MICHAEL G. OXLEY, Ohio
HOWARD C. NIELSON, Utah
MICHAEL BILIRAKIS, Florida
DAN SCHAEFER, Colorado
FRED J. ECKERT, New York

Wm. Michael Kitzmiller, *Staff Director*
Thomas M. Ryan, *Chief Counsel*
Arnold I. Havens, *Minority Counsel*

Subcommittee on Telecommunications, Consumer Protection, and Finance

TIMOTHY E. WIRTH, Colorado, *Chairman*

AL SWIFT, Washington
MICKEY LELAND, Texas
CARDISS COLLINS, Illinois
JOHN BRYANT, Texas
JIM BATES, California
THOMAS A. LUKEN, Ohio
MIKE SYNAR, Oklahoma
W.J. "BILLY" TAUZIN, Louisiana
WAYNE DOWDY, Mississippi
JIM SLATTERY, Kansas
JAMES H. SCHEUER, New York
HENRY A. WAXMAN, California
EDWARD J. MARKEY, Massachusetts
JOHN D. DINGELL, Michigan
(Ex Officio)

MATTHEW J. RINALDO, New Jersey
CARLOS J. MOORHEAD, California
THOMAS J. TAUKE, Iowa
DON RITTER, Pennsylvania
DAN COATS, Indiana
THOMAS J. BLILEY, Jr., Virginia
JACK FIELDS, Texas
MICHAEL G. OXLEY, Ohio
HOWARD C. NIELSON, Utah
JAMES T. BROYHILL, North Carolina
(Ex Officio)

Marc E. Lackritz, *Staff Director/Chief Counsel*
Patti Shwayder-Coffin, *Policy Analyst*
Tom Lykos, *Associate Minority Counsel*

CONTENTS

Testimony of: Page
- Hunt, James, Group Director, General Accounting Office 5
- Miller, Jeffrey, Chief Counsel, National Highway Traffic Safety Administration, Department of Transportation 45
- Parker, George, Associate Administrator for Enforcement, National Highway Traffic Safety Administration, Department of Transportation 45
- Peach, J. Dexter, Director, Resources, Community, and Economic Development Division, General Accounting Office 5
- Steed, Diane K., Administrator, National Highway Traffic Safety Administration, Department of Transportation 45

Materials submitted for the record by:
- Comptroller General of the United States, letter, dated June 10, 1986 from Charles Bowsher to John Dingell re a request that we review the actions of the NHTSA in connection with the alleged tendency of automatic transmissions in certain 1966-1979 Ford model vehicles 279
- General Accounting Office, letter, dated October 18, 1985, from Charles Bowsher to John Dingell re reference to September 9, 1985, letter which raised several issues and posed a series of questions for the record relating to August 1 testimony 89
- Subcommittee on Telecommunications, Consumer Protection and Finance:
  - Attachment III the CFAS provided names of 296 victims of Park to Reverse incidents 68
  - Letter, dated September 9, 1985, from John Dingell to Charles Bowsher re July 30, 1985, reply concerning the investigation regarding the actions of the NHTSA since settlement of Ford transmission investigation in 1980 76
  - Letter, dated September 9, 1985, from John Dingell to Diane Steed re asking for reply to additional questions of the Ford transmission case 84
  - Letter, dated October 30, 1985, from John Dingell to Charles Bowsher re reply to September 9, 1985, letter concerning issues raised at August 1 hearing 87
- Transportation Department, letter, dated October 18, 1985, from Diane Steed to John Dingell re response to September 9, 1985, letter asking for replies of additional questions on Ford automatic transmissions 90

NHTSA'S CONDUCT IN THE FORD TRANSMISSION CASE

THURSDAY, AUGUST 1, 1985

House of Representatives,
Committee on Energy and Commerce,
Subcommittee on Telecommunications,
Consumer Protection, and Finance,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:37 a.m., in room 2322, Rayburn House Office Building, Hon. Timothy E. Wirth (chairman) presiding.

Mr. Wirth. If the subcommittee would come to order.

Today we review the sorry performance of the National Highway Traffic Safety Administration in enforcing our automobile safety laws.

Over the last 4 years, NHTSA has compiled a record that is nothing short of disgraceful. The case study before us today, the Ford transmission case, is yet another example of NHTSA's disregard of the public safety and, I believe, its disregard of the law.

Let me review the pattern of this administration's nonenforcement of the safety and health laws over the last several years. Of 67 recall requests to manufacturers since 1981, 23 have been ignored by the manufacturers, and in most instances NHTSA has not pursued the case.

In the GM X-Car case, NHTSA for 3 years repeatedly denied that there was a brake defect, covered up test results, and withheld critical, life-saving information from the American public until this subcommittee and the General Accounting Office investigated the matter. Once that was done, NHTSA began to do its job, and finally sued General Motors to recall over 1 million cars.

NHTSA refused to investigate nearly 2 million A-Cars for brake defects until pressed by this subcommittee to do so. After ignoring several congressional requests to look into this case, NHTSA has now asked General Motors to recall the car. GM has declined.

NHTSA has only issued one safety standard of its own without a court order in the last 4 years. Moreover, the agency has repealed the automatic crash protection standard, repealed the bumper standard, and shelved its side impact ruling. The list goes on and on.

Today we have another example, perhaps the worst yet, of NHTSA's nonenforcement of the law. For 4 years, this administration has refused to pursue the Ford transmission case. The agency has received more complaints on this problem, some 23,000 complaints from the public, than on any other defect in the history of the agency.

Over the past 2 years, the NHTSA Administrator has repeatedly told us in subcommittee hearings and in numerous letters that there is no problem and that the death rate from the park-to-reverse problem has significantly dropped since the case was settled at the end of 1980.

At subcommittee hearings in 1983, the Administrator stated that the death rate from Ford transmissions had dramatically dropped, to the point that the average rate of fatalities reported per day was 300 percent higher before completion of the warning label program than it is today.

Today, in just a few minutes, the General Accounting Office will tell us a different story. In my view, the GAO's information suggests that the NHTSA Administrator has either intentionally misled this subcommittee or is incompetent.

As the GAO outlines the facts of this case, I can only conclude that Ms. Steed has become the Rita LaVelle of highway safety.

The GAO, the NHTSA Administrator and the Ford Motor Co. were invited to testify this morning. Ford declined.

Let's look at the facts of this case. Two years ago this week, this subcommittee held a hearing on the Ford transmission case. At that time, we were extremely concerned that since the settlement of the case when adhesive labels containing parking instructions were mailed to car owners, 50 deaths had occurred.

On July 27, almost 2 years ago, July 27, 1983, then Acting Administrator Steed assured us that we had nothing to worry about. She stated that there were only 26 deaths attributed to the park-to-reverse problem since the settlement and the death rate had significantly declined.

One year later, in August 1984, I wrote to Administrator Steed asking again about the number of fatalities attributable to the Ford transmission problem. On October 2, I was sent a chart and a graph which, in Ms. Steed's words, showed the number of reported fatal accidents declining significantly after the settlement. Also, she added, the number of reported fatalities is falling at a faster rate than the number of those vehicles remaining on the road.

By a letter dated December 10, 1984, Ms. Steed again wrote that in all instances the rate of reported fatalities is decreasing.

On February 12, 1985, I requested that the General Accounting Office investigate NHTSA's conduct in connection with the Ford transmission case. I was disturbed by reports of continuing deaths and allegations that NHTSA was manipulating the data to reach a preordained result.

Today the General Accounting Office will release the results of its 5-month investigation. Unfortunately, my hunch was correct. In stark contrast to Ms. Steed's testimony and her letters to this subcommittee, the GAO has found that the death rate has not decreased by 300 percent; it has not even significantly declined, as Ms. Steed has claimed. Indeed, since the settlement, the death rate has increased.

In fact, we have had more reports of deaths from this defect since the settlement—138 Americans have died since the settlement—than NHTSA knew about when the initial defect determination was made 5 years ago.

For an agency charged with protecting the public safety, this, in my opinion, is an outrageous chain of events; and there is more.

NHTSA did virtually nothing on its own initiative on the Ford transmission case until I requested the GAO investigation and until the Center for Auto Safety filed a petition requesting an expedited defect investigation by the agency. Then and only then did NHTSA begin to review the fatality data in this case.

And what do you suppose the agency found? A staff report dated July 3, 1985, confirmed that indeed the rate of fatalities had not significantly decreased since the 1980 settlement. In fact, 1984 had the second highest reported fatality rate per vehicles on the road from Ford transmissions of any year in the last decade.

And what did NHTSA do with this information? Increasing fatalities obviously did not support NHTSA's rhetoric that the warning label program was working, so NHTSA changed its tactics. Instead of talking about the decline in fatalities to bolster its intent to do nothing, NHTSA denied the Center for Auto Safety's petition on the basis that accidents and incidents reported to the agency had declined since the settlement. They changed their criteria.

And where do you suppose NHTSA got the information on accidents and incidents? NHTSA threw out its own data base, tossed it away, developed over many years, and got a new, unverifiable list. From whom? The Ford Motor Co. Incredibly, the agency relied not on fatalities, which the agency itself had verified and investigated, but on brandnew information supplied by the very company that NHTSA was supposed to be investigating.

With this sorry course of behavior on such an obvious problem, NHTSA has abrogated its responsibility to protect the safety of the American public. Playing a numbers game while people are being killed and injured as a result of the transmission problem makes a mockery of the agency and its mandate and does not serve the American people.

Today we challenge the Administrator, Ms. Steed, to explain to this subcommittee why her actions are in the public interest. We challenge her to explain why it took a GAO investigation to get some straight answers on how many people have died because of this transmission problem, and we challenge her to defend her conduct in not enforcing the safety law in this case.

I would like to welcome Mr. J. Dexter Peach of the GAO again to the subcommittee. As always, I would like to compliment the GAO and Mr. Peach and company and their very capable staff on the thoroughness, competence, and fairness that they have brought to this work.

We appreciate your help and look forward to your testimony.

Before recognizing you, however, Mr. Peach, let me ask other members of the subcommittee if they have opening statements they might like to make.

Mr. Rinaldo.

Mr. RINALDO. Thank you, Mr. Chairman.

Mr. Chairman, I certainly appreciate having this hearing today and I want to thank Diane Steed, the NHTSA Administrator, and Mr. Peach from GAO for being with us.

As you stated, this subcommittee has long been concerned about the problem of faulty transmissions on Ford cars manufactured between 1966 and 1980. In a hearing held by this subcommittee in 1983, we heard from witnesses who were injured as their automatic transmissions jumped from park to reverse.

We also had with us at that time family members of persons who were killed as a result of this defective equipment. Allegedly, 306 deaths, 4,500 injuries, and 11,600 accidents are possibly attributable to this defect.

In 1980, NHTSA decided not to make a final determination concerning the alleged defect. Instead, NHTSA determined to enter into a settlement agreement with Ford. The settlement required Ford to notify, I guess, about 20 million affected Ford owners of the defect. In addition, Ford agreed to send warning labels designed to provide continuing reminders to drivers to take reasonable steps to secure their vehicles from unintended movement when parked.

In return, NHTSA agreed to close the case without seeking additional remedies against Ford in the absence of any new information.

In July 1983, this subcommittee held hearings to determine whether the settlement had proven to be an effective remedy to the alleged defect. At that hearing, evidence was offered that demonstrated the settlement was not working as expected and that NHTSA was not adequately monitoring the effectiveness of the settlement.

Unfortunately, there are still many of the vehicles that we have discussed on the road today, and questions must in all fairness be raised whether or not the warning label mandated by NHTSA in 1980 is effective. While the agency has asserted that there has been an appreciable reduction in fatalities on these vehicles since 1980, others—most notably, the Center for Auto Safety—rebut this claim.

So I think that on the basis of all that has been said, and I won't prolong my statement, it is an important hearing. There are a lot of facts to be determined at this hearing, and Mr. Chairman, I will end my statement at this point so we can get on with other members who may have statements and with the witnesses, but I request unanimous consent to revise and extend my remarks.

Mr. **Wirth**. Thank you, Mr. Rinaldo, and we are pleased to have you here.

Mr. Bryant.

Mr. **Bryant**. Thank you, Mr. Chairman.

I would first like to express my thanks and admiration to Chairman Wirth for doggedly pursuing this matter. During times when the public's interest might have been directed elsewhere, he stayed with it and has kept it up, and I think perhaps by continuing to doggedly pursue it, we might be able to save a few lives.

It is obvious, or has been obvious so far, that we are not going to be able to rely upon the people who have been charged with the responsibility for protecting lives to take action that has any meaning. Although the National Highway Traffic Safety Administration and its Director have been aware of the life-threatening defect in 20 million cars on the American highways, they have time and again minimized the dangers and taken steps which are almost laughable—if they were not so tragic in their consequences—to properly protect the public.

This negligence, in addition to the unconscionable decision to rely upon manufacturer's data rather than results of its own investigation, has—according to the GAO study and in NHTSA's own review—permitted additional deaths to occur.

There have been at least 33 deaths in Texas, my State, attributable to the defect, 16 of them since the settlement agreement between NHTSA and the automobile manufacturer was reached in 1980, ranking our State of Texas second after California in the number of fatalities caused by this defect.

Less than a month ago, despite the GAO study in progress and mounting evidence that hundreds and perhaps thousands of lives are needlessly in jeopardy because of this dangerous defect, Ms. Steed as Director of NHTSA refused to reopen the investigation.

I can hardly imagine a justification for that. I am here today to see if one can be presented to us.

Thank you, Mr. Chairman.

Mr. **Wirth**. Thank you very much, Mr. Bryant.

Again, Mr. Peach, we appreciate your being here and look forward to hearing your testimony. Your statement and testimony, and your final report will be included in full in the record, and we would ask you to summarize in whatever way you think would be most helpful to the committee.

Thank you very much, Mr. Peach.

STATEMENT OF J. DEXTER PEACH, DIRECTOR, RESOURCES, COMMUNITY, AND ECONOMIC DEVELOPMENT DIVISION, GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY HAMES HUNT, GROUP DIRECTOR

Mr. **Peach**. Thank you, Mr. Chairman.

We appreciate the opportunity to be here today to discuss our ongoing review of actions taken by the National Highway Traffic Safety Administration in conjunction with the Ford transmission park-to-reverse case.

This work is being done both at your request and the request of the Chairman of the Subcommittee on Oversight and Investigations, House Committee on Energy and Commerce.

I would like to introduce my two colleagues with me at the table, Mr. James Hunt, who is the group director for the work we do in the highway and traffic safety-related area at Transportation, and Mr. Steve Sternlieb, who has been working on this particular assignment.

Now, while both these requests deal with NHTSA's handling of the Ford transmission case, some of the areas in which you and Chairman Dingell expressed interest are different. We plan to issue reports to each requester, which would contain a common body of information and answer the questions raised.

Since we have not completed all work to satisfy both requests, the information we provide today should be considered tentative and subject to some possible revision based on any additional information we uncover as we complete our work.

You asked that our testimony today address three specific areas. One is NHTSA's efforts to monitor the December 30, 1980, agreement between Transportation and Ford settling the investigation. The second is the incident, accident and fatality statistics related to the case, and third, NHTSA's campaign to inform the public of potential park-to-reverse safety problems.

The next three or four pages of my statement briefly summarizes what we have found, and I also provide a chronology of the events that have led up to this point.

With that, I would really like to move to the type of information that is included in page 5 and the remainder of my statement, which provides the guts of what we have found on these three issues that you asked us to address.

NHTSA basically has made commitments to monitor the agreement. There are two basic commitments that are involved. One was made to the U.S. Court of Appeals, where NHTSA stated it would monitor the settlement agreement to assess its success.

The second was made to this subcommittee in the 1983 oversight hearings when the Administrator stated that NHTSA would monitor the case and investigate all fatal accidents involving Ford transmissions.

In essence, most of NHTSA's activity on monitoring has taken place subsequent to the commitments made in the oversight hearings held before this subcommittee. In its July 1983 letter, NHTSA clarified its definition of this commitment to the court of appeals, stating that its commitment was to monitor the results of the agreement and the complaint rate rather than individual actions by vehicle owners to place labels in their vehicles.

NHTSA has continued to gather raw data on complaints. They have corresponded with Ford 13 times since the close of the investigation in May 1981, but most of this correspondence was prompted by outside sources such as the Center for Auto Safety and communications that had been forwarded from this subcommittee.

We found three of the letters in which the correspondence was initiated directly by NHTSA.

In the July 1983 letter, the Administrator stated the agency did not view its monitoring responsibilities to include the extent to which labels were placed on the vehicles. While they believe displaying the label is important, they indicated that they believed the letter to the owners, which had more detailed information, would serve as the primary mechanism for alerting owners to safety precautions.

NHTSA cited in that correspondence a reduction in the deaths and injuries as evidence that the owners are taking the precautions which were indicated.

In an October 1983 letter to you, they clarified that the investigations would not be conducted on all park-to-reverse Ford fatalities but would be limited to those fatalities reported after the October 3 letter, and that they would conduct investigations only where there was not sufficient information to establish whether the fatality was related to a park-to-reverse incident.

Prior to that commitment, NHTSA had not investigated any Ford fatalities since the settlement agreement. In October 1983, NHTSA contracted with GAB Business Services, Inc. to conduct fatality investigations, and the first postsettlement investigation by the contractor began in January 1984.

As of July 1985, they had conducted 33 investigations for NHTSA.

Let me talk a little bit more about the incident, accident and fatality statistics, and in this case I'm going to go directly through my statement because there is a need to be rather precise as to just exactly how you track these statistics.

There has been and continues to be considerable controversy surrounding the validity and use being made of these statistics. Because of the controversy, we looked at both sources and reliability of the data.

NHTSA has reported that incident and accident data indicates the number and rate of such events involving 1970 to 1979 model year Ford vehicles has declined in every calendar year since the December 1980 settlement. Conversely, as reported by NHTSA and confirmed by us, the fatality data shows that while there has been a decline in the first year following the settlement, there has been an overall increase in the fatality rate since that time, or since 1981.

Regarding the incident and accident data, NHTSA prior to the settlement agreement had developed an extensive data base. It contained over 23,000 reports involving more than 12,000 vehicles. The complaints were received from Ford and from consumers either directly or through State and private consumer groups.

In early 1980, NHTSA discontinued entries into the data base in order to finalize statistical results which were used in the June 1980 initial defect determination report. Reports received between early 1980 and the December 30, 1980, settlement were never entered into the data base.

According to NHTSA officials, the entire data file, including computer tapes and support documents, were sent to storage. During the investigation, Ford criticized that data as being flawed and misleading, and the criticism primarily related as to whether there were duplicate or double counts that were involved in some of that information.

I might add, Mr. Chairman, that we have verified at least that the data on those 23,000 reports is in storage or file room type locations located on the fifth floor in the building where DOT is located.

Shortly after the settlement, NHTSA established a new data base of incidents received since the settlement. As of July 1985, this data base contained about 1,700 entries. While we have not completed a detailed examination of these entries, we have ascertained that they basically consist of unverified incident and accident reports.

Ford has also maintained a data base. It includes a listing of some 19,000 incident and accident reports involving 1966 to 1984 model year vehicles, and includes statistics compiled by Ford during and subsequent to the agency's investigation.

In submitting this data to NHTSA, Ford described these statistics as being largely unverified reports or complaints alleging unexpected vehicle movement. It is based on letters and telephone calls from owners, letters from attorneys and insurance companies, lawsuits, news clippings, and Center for Auto Safety and other parties' submissions to NHTSA which have been forwarded to Ford.

NHTSA accepted the Ford data as being the most comprehensive data available and used these statistics as the principal information to conclude that the absolute number and rates of reported incidents and accidents have declined in every calendar year since the December 1980 settlement.

Now, in contrast to the information contained in incident and accident reports, fatality reports tend to have considerable documentation and independent verification. This would include police and coroner reports. In addition, NHTSA has had the contractor conduct independent investigations where sufficient information was not available to judge whether the fatality was a park-to-reverse case.

Reports of the Ford park-to-reverse fatalities have been received from various sources, including individual consumers, the Center for Auto Safety, Ford Motor Co. and its representatives, and NHTSA's own Fatal Accident Reporting System. We verified that NHTSA's files include all the cases reported by these various sources. As of June 1985, this data base consists of a total of 446 reports of fatalities that involved Ford vehicle model years 1960 to 1984.

Of these 446 fatality reports, 336 involved 1970 to 1979 Ford vehicles. The 336 figure includes 110 fatalities reported before the December 30, 1980,0 settlement agreement, and 226 reported after the agreement. Of the fatalities reported after the agreement, 88 occurred before, and 138 occurred after the agreement.

Not all of the reported park-to-reverse fatalities may be caused by a failure to hold or engage in "Park." Ever since its initial determination of a defect in June 1980, NHTSA has attempted to evaluate each case, sorting out those fatalities that seem unlikely to have been caused by such a failure.

NHTSA has varied its methodologies for evaluating these cases. However, NHTSA has never established specific written criteria for judging park-to-reverse fatality reports. For example, at the time of the initial defect determination in June 1980, reported cases were excluded from its fatality statistics when NHTSA's legal counsel felt they could not be successfully defended as park-to-reverse related and when deaths occurred more than 30 days after the accident.

When NHTSA testified before the subcommittee in July 1983, it excluded all reports involving intoxicated drivers or possible mechanical problems in the vehicle.

In responding to the March 1985 petition by the Center for Auto Safety, NHTSA officials advised us that they had made an attempt to correct any biases that may have crept into their prior methodology.

Briefly described, a panel of three NHTSA staff engineers reassessed all reported Ford park-to-reverse fatality cases received by NHTSA. For each reported fatality, the panel made a judgment based on the evidence available as to whether the accident was definitely related to the subject problem—or yes—or was not definitely related—no.

Reports for which the panel found insufficient evidence to support either a "yes" or a "no" judgment were categorized as possibly related to the problem.

Mr. WIRTH. Mr. Peach.

Mr. PEACH. Yes.

Mr. WIRTH. We are in the process of a reconciliation procedure downstairs in the full committee, and Mr. Bryant and I are going to have to go down there for a few minutes.

If we could suspend for a few minutes, we will be back very shortly.

Mr. PEACH. Fine, Mr. Chairman.

Mr. WIRTH. Thank you, sir.

[Brief recess.]

Mr. WIRTH. Thank you very much, Mr. Peach. We greatly appreciate your patience as we get through the business of these last few days before the August recess.

Please proceed. Thank you very much.

Mr. PEACH. All right, Mr. Chairman.

We were at a point where we are talking about the new methodology which NHTSA used to judge the fatality information for the 1970 to 1979 vehicles, where they used the three-person engineering panel.

The fatality reports that NHTSA had, the 336, they judged 180 to be "yes," or related; 77 to be "no," or not related; and 79 to be possibly related.

We have developed a graph, a copy of which is attached to the statement and a copy of which is displayed as the first chart on the left side of the conference room, that plots the rate of occurrence of the fatalities for each year from the first year in which a case occurred, 1971, through the end of 1984, the last full calendar year.

That rate is expressed as the number of fatalities per million vehicles on the road. The statistics on the fatality rate for the 1970 to 1979 model year Ford vehicles show an overall increase for the period 1971 to 1984. It shows a decline in 1981, the first year after the warning letters and labels were issued, and an increase since that time.

There are two lines on the chart. Basically, the bottom line is the yeses, where the NHTSA panel had a definite finding that it was related and the top line or the blue line tracks the "yes" plus the possibles.

Now, you should use caution in interpreting the data from the graph. For example, the data points on the graph for the early years may be low since NHTSA did not collect fatality reports until 1977. Stated another way, when they started collecting fatality data in 1977, they had to go back and reconstruct everything prior to that point, which raises a question of whether or not they were, in fact, able to pick up everything.

Also, it is not known what further fatality reports might be received for any of these years, especially the more recent years. Again, what I'm trying to point out is there generally is a lag time involved before NHTSA can feel confident or should feel confident that they have all the fatalities reported and in their data base. Generally it has taken up to 1½ to 2 years on the average to get the fatality reports reported and into the data base, so the numbers for the last couple of years still could be understated somewhat.

This data differs from the graph of Ford park-to-reverse fatalities submitted to the subcommittee by NHTSA in 1983, which showed a sharp decline since the settlement. The differences can be explained in several ways. NHTSA's overall data base of alleged Ford park-to-reverse fatalities has nearly doubled since 1983, and as noted earlier, all cases on file have been reevaluated using a different methodology.

Also, our graph combines the count of fatalities for each year with the estimated number of Ford vehicles on the road in order to establish a fatality rate. NHTSA's graph did not contain fatality rate data.

Finally, our graph ends in 1984 with the last fully reported calendar year rather than with a partial year.

Park-to-reverse-related fatalities have been reported for vehicles produced by manufacturers other than Ford. These manufacturers include GM, Chrysler, and American Motors. As of June 28, 1985, NHTSA has on file 267 reports of fatalities involving such manufacturers. These reports have been received since the December 30, 1980 Ford settlement.

Of these, 177 involve GM vehicles, 70 involve Chryslers, 9 AMC, 6 are spread among other manufacturers, and in five cases, the records do not indicate the make of the vehicle.

The 267 non-Ford cases span model years 1960 to 1985. To be consistent with our data on Ford fatalities, we have limited our non-Ford fatality statistics to model years 1970 to 1979. NHTSA's evaluation of these cases, using this same three-member panel process by which it evaluated the Ford cases, identified 172 fatalities. Of these, 46 were judged to be park-to-reverse related, 62 not to be related, and 64 to be possibly related.

So in other words, for the non-Ford, the judgment was there were 46 that were related and 64 possibly related covering this time period of 1970 to 1979.

The last area that you asked us to cover was the public awareness campaign. Also in this subcommittee's July 1983 hearings, the Administrator made a commitment to inform the public about the importance of not leaving a vehicle unattended with its motor running. This commitment included issuing press releases and articles, strengthening the language used on the NHTSA hotline and in written response to inquiries, and considering steps to inform the elderly of the potential hazard.

In 1984, NHTSA began a public awareness campaign directed at instructing drivers on how to properly and safely park their vehicles. They issued a general news release on safe driving practices, provide a "live" copy radio public service announcement on two occasions to 1,900 radio stations, and prepared and distributed one article to an estimated 4,000 weekly newspapers and also to the Consumer Product Safety Network Newsletter, the Journal of Traffic Safety Education, and the American Automobile Association Club Editorial Service.

These actions took place between October 1984 and July 1985. Since there was no final defect determination, NHTSA chose to mount a generic public awareness campaign rather than identify a specific manufacturer.

No information is available on how many of the 1,900 radio stations and 4,000 newspapers actually used the information nor how many times and when the information was broadcast. NHTSA did in 1983 change the language used in responding to consumer hotline calls and written inquiries to be more specific about the NHTSA Ford park-to-reverse investigation and the potential safety problem associated with these vehicles.

To inform the elderly, NHTSA at one point stated in correspondence to you that it would explore inserting parking precaution reminders to the elderly into envelopes containing their Social Security checks. It is our understanding that subsequently the Administrator decided against such a mailing because of its cost.

We approached NHTSA in our work to try to find out what that cost information was and were not able to obtain specific information from them. However, we have had very recent contacts with the Social Security Administration to try to determine what the cost of such a mailing might be, and they estimated it in an informal way, which we will have to go back and confirm, at about $1.6 million based on experience they had had in sending out an asbestos mailing within the last year or so. That would go to about 36 million recipients, I believe.

Mr. Chairman, that concludes our statement on the three issues, and we would be pleased to try to respond to your questions.

[Testimony resumes on p. 28.]

[The prepared statement of Mr. Peach follows:]

UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

STATEMENT OF
J. DEXTER PEACH, DIRECTOR
RESOURCES, COMMUNITY, AND ECONOMIC DEVELOPMENT DIVISION
BEFORE THE
SUBCOMMITTEE ON TELECOMMUNICATIONS,
CONSUMER PROTECTION, AND FINANCE
HOUSE COMMITTEE ON ENERGY AND COMMERCE
ON
THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION'S
ACTIVITIES INVOLVING FORD TRANSMISSION "PARK-TO-REVERSE" INCIDENTS

Mr. Chairman and Members of the Subcommittee:

We appreciate the opportunity to be here today to discuss our ongoing review of actions taken by the National Highway Traffic Safety Administration (NHTSA) in connection with the Ford transmission park-to-reverse case. Our work on this case is being done both at your request and the request of the Chairman of the Subcommittee on Oversight and Investigations, House Committee on Energy and Commerce. While both requests deal with NHTSA's handling of the Ford transmission case, some of the areas in which each of the requesters expressed interest are different. We plan to issue separate reports to each requester containing a common body of information and answering the specific questions of each. Since we have not yet completed all work to satisfy both requests, the information we provide today should be considered tentative.

You asked that our testimony today address three specific areas: (1) NHTSA's efforts to monitor the December 30, 1980, agreement between the Department of Transportation and Ford Motor Company settling NHTSA's investigation of the Ford park-to-reverse case; (2) incident, accident, and fatality statistics related to this case; and (3) NHTSA's campaign to inform the public of the potential park-to-reverse safety problem. The attachment describes our scope of work to address those three issues.

Briefly summarized, our analysis of the information we obtained on these three areas shows that:

--NHTSA has taken action to monitor the settlement agreement by continuing to obtain incident, accident, and fatality statistics. Much of NHTSA's monitoring activity has been prompted by the urging of interested parties, including this Subcommittee. NHTSA did not view its monitoring responsibilities to include determining the extent to which labels reminding vehicle owners of certain safety operations were placed on the vehicles. These labels together with a letter describing certain safety precautions to be followed when parking a vehicle, were the cornerstone of the settlement agreement with Ford, and were sent by Ford to all owners of 1970-79 Ford vehicles.

--Using incident and accident data NHTSA developed as well as data supplied by Ford in May 1985, NHTSA concluded that both the numbers and rates of park-to-reverse incidents and accidents involving 1970-79 model year Ford vehicles has declined in every calendar year since the 1980 settlement. In contrast, however, statistics on the fatality rate for the same model year Ford vehicles show a decline in 1981, the first year after the letters and labels were issued, and an increase since that time.

--NHTSA has undertaken a public awareness campaign directed at instructing drivers on how to properly and safely park their vehicles. This involved issuing a general news release on safe driving practices, providing a "live-copy" radio public service announcement to 1,900 radio stations, and distributing an article to an estimated 4,000 publications. None of this material specifically identified Ford. NHTSA has also changed the language it uses in responding to consumer telephone calls and written inquiries to be more specific about the NHTSA park-to-reverse investigations and the potential safety problem of leaving a motor vehicle unattended with its motor running.

The remainder of my testimony addresses each of these issues in more detail. But first, I believe it would be useful to briefly review the chronology of events concerning this case.

CHRONOLOGY OF MAJOR EVENTS

On October 18, 1977, NHTSA opened an investigation of Ford vehicles[1] equipped with certain automatic transmissions. The investigation was opened on the basis of 31 reports of Ford vehicles which failed to hold or engage in park resulting in the unexpected movement of the vehicle. In June 1980, NHTSA made an initial determination that a safety defect existed involving model year 1970-79 Ford vehicles. In its report containing the initial determination, NHTSA stated that it had received over 23,000 reports of failures involving more than 12,000 vehicles, received from Ford and from consumers, either directly or through state and private consumer groups. In August 1980, NHTSA held a public hearing to provide Ford an opportunity to present its views. Following that hearing, on October 3, 1980, in a memorandum to the Secretary, the NHTSA Administrator recommended that a final determination of a safety-related defect be declared. Rather than make a final defect determination and order a vehicle recall, the Secretary entered into a settlement agreement with Ford.

Under the settlement agreement, signed on December 30, 1980, the Department of Transportation and Ford agreed that Ford would send letters and adhesive labels to the owners of all vehicles covered by the initial determination of a defect (an estimated 22-million vehicles). The letter urged recipients to place the label in a conspicuous place in their motor vehicle, such as the dashboard or sun visor. The letter and label reminded the owners of three safety precautions to be followed before leaving their vehicle: put the vehicle in park, set the parking brake fully, and shut off the ignition. In return for this action by Ford, the Department agreed to close the case but reserved the right to take further action if warranted by the development of new facts.

---

[1] Model years prior to 1970 were not included in the investigation because they were not within NHTSA's recall authority under the National Traffic and Motor Vehicle Safety Act, which contains an 8-year statute of limitations.

In March 1981, the Center for Auto Safety, a private organization, filed suit challenging the Secretary's decision to settle the case in the above manner as being arbitrary, capricious, and an abuse of his discretion. In October 1981, the U.S. District Court for the District of Columbia held that the Secretary's decision was not arbitrary and capricious or an abuse of his discretion. The Court of Appeals for the District of Columbia affirmed that decision in August 1982.

In July 1983, this Subcommittee held oversight hearings on the Ford transmission case. In the course of the hearings, NHTSA agreed to monitor the settlement agreement, conduct a public information campaign, and investigate fatalities related to Ford park-to-reverse incidents.

On March 6, 1985, the Center for Auto Safety, in concert with 19 additional organizations and 2 individuals, petitioned NHTSA to again investigate the park-to-reverse matter. On July 12, 1985, NHTSA rejected the petition.

NHTSA'S MONITORING OF FORD ACTIONS

In the years following the settlement, NHTSA has made commitments to monitor the agreement. One such commitment was made in

March 1982 to the U.S. Court of Appeals, in which NHTSA stated it would monitor the settlement agreement to assess its success. As previously mentioned, another was made during the 1983 oversight hearings before this Subcommittee, when the NHTSA Administrator stated that NHTSA would monitor the case and investigate all fatal accidents involving Ford transmissions.

In a July 26, 1983, letter to Chairman Wirth of this Subcommittee, NHTSA clarified its definition of the commitment made to the Court of Appeals to monitor the settlement agreement. It stated that its commitment was to monitor the results of the agreement and the complaint rate rather than individual actions by vehicle owners to place the labels in their vehicles.

Using this definition, NHTSA has continued to gather complaint rate data. The agency has corresponded with Ford 13 times since the close of the investigation in May 1981. Most of the correspondence was prompted by outside sources such as the Center for Auto Safety and this Subcommittee. Three of the letters were initiated by NHTSA.

In the July 26, 1983, letter, the Administrator also stated that the agency did not view its monitoring responsibilities to include determining the extent to which labels were placed on the vehicles. While displaying the labels is important, NHTSA believes the letter to the owners, which had more detailed information, served as the primary mechanism for alerting owners to the safety precautions. NHTSA, in July 1983 correspondence with Chairman Wirth, cited a reduction in deaths and injuries as evidence that owners are taking the precautions indicated.

In terms of its commitment to investigate Ford fatalities, in an October 3, 1983, letter to Chairman Wirth, the NHTSA Administrator clarified that investigations would not be conducted on all park-to-reverse Ford fatalities but would be limited only to those fatalities reported after the October 3 letter. Investigations would be conducted only where there was insufficient information to establish whether the fatality was related to a park-to-reverse incident. Prior to this commitment, NHTSA had not investigated any Ford fatalities since the settlement agreement. In October 1983, NHTSA contracted with GAB Business Services, Inc., to conduct fatality investigations. The first post-settlement investigation by the contractor began in January 1984. As of July 15, 1985, 33 investigations have been conducted.

INCIDENT, ACCIDENT, AND FATALITY STATISTICS

There has been, and continues to be, considerable controversy surrounding the validity and use being made of the incident, accident, and fatality statistics. Because of this controversy, we examined the sources and reliability of the data.

NHTSA has reported that incident and accident data indicates the number and rate of such events involving 1970-79 model year Ford vehicles has declined in every calendar year since the December 1980 settlement. Conversely, as reported by NHTSA and confirmed by us, the fatality data shows that while there was a decline in the first year following the settlement there has been an overall increase in the fatality rate since that time.

Regarding the incident and accident data, NHTSA, prior to the settlement agreement, had developed an extensive data base. It contained over 23,000 reports, involving more than 12,000 vehicles, received from Ford and from consumers, either directly or through state and private consumer groups. In early 1980, NHTSA discontinued entries into the data base in order to finalize the statistical results which were used in the June 1980 initial defect determiniation report. Reports received between early 1980 and the December 30, 1980 settlement were never entered into a data base. According to NHTSA officials, the entire data file, including computer tapes and support documents, were sent to storage. During the investigation, Ford criticized that data base as being flawed and misleading.

Shortly after the settlement, NHTSA established a new data base of incidents reports received since the settlement. As of July 1985, this data base contains about 1,700 entries. While we have not completed a detailed examination of these entries, we have ascertained that they consist of unverified incident and accident reports.

Ford has also maintained a data base. It includes a listing of some 19,000 incident and accident reports involving 1966-84 model year vehicles and include statistics compiled by Ford during and subsequent to the agency's investigation. In submitting the data to NHTSA, Ford described these statistics as being largely unverified reports or complaints alleging unexpected vehicle movement. It is based on letters and telephone calls from owners; letters from attorneys and insurance companies; lawsuits; news clippings; and Center for Auto Safety and other parties' submissions to NHTSA which have been forwarded to Ford. NHTSA accepted the Ford data as being the most comprehensive data available and used these statistics as the principal information to conclude that the absolute number and the rates of reported incidents and accidents have declined in every calendar year since the December 1980 settlement.

In contrast to the information contained in incident and accident reports, fatality reports tend to have considerable documentation and independent verification, including police and coroner reports. In addition, NHTSA has had contractors conduct independent investigations where sufficient information was not available to judge whether the fatality was a park-to-reverse case.

Reports of Ford park-to-reverse fatalities have been received from various sources, including individual consumers, the Center for Auto Safety, Ford Motor Company and its representatives, and NHTSA's own Fatal Accident Reporting System. We verified that the NHTSA files include all the cases reported by these various sources. As of June 1985, this data base consists of a total of 446 reports of fatalities that involve Ford vehicle model years 1960-84. Of these 446 fatality reports, 336 involve 1970-79 Ford vehicles. The 336 figure includes 110 fatalities reported before the December 30, 1980, settlement agreement and 226 reported after the agreement. Of the fatalities reported after the agreement, 88 occurred before and 138 occurred after the agreement.

Not all of the reported park-to-reverse fatalities may be caused by a failure to hold or engage in park. Ever since its initial determination of a defect in June 1980, NHTSA has attempted to evaluate each case, sorting out those fatalities that seem unlikely to have been caused by such a failure.

NHTSA has varied its methodologies for evaluating these cases. However, NHTSA has never established specific written criteria for judging park-to-reverse fatality reports. For example, at the time of the initial defect determination in June 1980, reported cases were excluded from its fatality statistics when NHTSA's legal counsel felt they could not successfully be defended as park-to-reverse-related and when deaths occurred more than 30 days after the accident. When NHTSA testified before this Subcommittee in July 1983, it excluded all reports involving intoxicated drivers or possible mechanical problems in the vehicle.

In responding to the March 1985 petition by the Center for Auto Safety, NHTSA officials advised us that they made an attempt to correct any biases that may have crept into their prior methodology. Briefly described, a panel of three NHTSA staff engineers reassessed all reported Ford park-to-reverse fatality cases received by NHTSA. For each reported fatality, the panel made a judgment based on the evidence available as to whether the accident was definitely related to the subject problem (yes), or was definitely not related (no). Reports for which the panel found insufficient evidence to support either a "yes" or a "no" judgment were categorized as possibly related to the problem (possible).

Using its new methodology, the NHTSA panel judged the 336 fatalities involving 1970-79 Ford vehicles. Of these fatality reports, 180 have been judged to be yes, 77 to be no, and 79 to be possible. We have developed a graph, which is attached to this statement, that plots the rate of occurrence of these fatalities for each year from the first year in which a case occurred, 1971, through the end of 1984, the last full calendar year. The rate is expressed as the number of fatalities per million vehicles on the road. Statistics on the fatality rate for 1970-79 model year Ford vehicles show an overall increase for the period 1971-84, a decline in 1981, the first year after the warning letters and labels were issued, and an increase since that time.

Caution should be exercised in interpreting the data from this graph. For example, data points on the graph for the earlier years may be low since NHTSA did not collect fatality reports until 1977. Also, it is not known what further fatality reports might be received for any of these years, especially the more recent years.

This data differs from the graph of Ford park-to-reverse fatalities submitted to this Subcommittee by NHTSA in 1983, which showed a sharp decline since the settlement. The differences can be explained in several ways. NHTSA's overall data base of alleged Ford park-to-reverse fatalities has nearly doubled since 1983; and, as noted earlier, all cases on file have been reevaluated using a different methodology. Also, our graph combines the count of fatalities for each year with the estimated number of Ford vehicles on the road in order to establish a fatality rate. NHTSA's graph did not contain fatality rate data. Finally, our graph ends in 1984 with the last fully reported calendar year rather than with a partial year.

Park-to-reverse-related fatalities have also been reported for vehicles produced by manufacturers other than Ford. These manufacturers include General Motors (GM), Chrysler, and American Motors Corporation (AMC). As of June 28, 1985, NHTSA has on file 267 reports of fatalities involving such manufacturers. These reports have been received since the December 30, 1980, Ford settlement. Of these, 177 involve GM vehicles, 70 involve Chryslers, 9 are AMC, 6 are spread among other manufacturers, and in 5 cases the records did not indicate the make of the vehicle.

The 267 non-Ford cases span model years 1960 to 1985. To be consistent with our data on Ford fatalities, we have limited our non-Ford fatalities' statistics to model years 1970-79. NHTSA's evaluation of these cases, using the same three-member panel process by which it evaluated the Ford cases, identified 172 fatalities. Of these, 46 fatalities were judged to be park-to-reverse-related, 62 not to be related, and 64 to possibly be related.

THE PUBLIC AWARENESS CAMPAIGN

In this Subcommittee's July 1983 hearings, the NHTSA Administrator made a commitment to inform the public about the importance of not leaving a vehicle unattended with its motor running. This commitment included issuing press releases and articles;

strengthening the language used on the NHTSA Hotline and in written responses to inquiries; and considering steps to inform the elderly of the potential hazard. In 1984, NHTSA began a public awareness campaign directed at instructing drivers on how to properly and safely park their vehicles. The agency issued a general news release on safe driving practices, provided a "live-copy" radio public service announcement on two occasions to 1,900 radio stations; and prepared and distributed one article to an estimated 4,000 weekly newspapers; and also to the Consumer Product Safety Network News Letter, the Journal of Traffic Safety Education, and the American Automobile Association Club Editorial Service. These actions took place between October 1984 and July 1985. Since there was no final defect determination, NHTSA chose to mount a generic public awareness campaign rather than identify a specific manufacturer.

No information is available on how many of the 1,900 radio stations and the 4,000 newspapers actually used the information nor how many times and when the information was broadcast.

NHTSA did, in 1983, change the language used in responding to consumer hotline calls and written inquiries to be more specific about the NHTSA Ford park-to-reverse investigation and the potential safety problem associated with these vehicles. To inform the elderly, NHTSA at one point stated in correspondence to Chairman Wirth that it would explore inserting parking precaution reminders to the elderly into envelopes containing their social security checks. Subsequently, the NHTSA Administrator decided against such a mailing because of its cost.

Mr. Chairman, this concludes my statement. I will be happy to respond to any questions you may have at this time.

Attachment

A DESCRIPTION OF GAO'S SCOPE

In addressing the three areas discussed in our testimony, we held extensive discussions with officials of NHTSA, the Center for Auto Safety, Ford Motor Company, General Motors (GM), Chrysler, American Motors Corporation (AMC), and selected foreign auto manufacturers.

In examining NHTSA's monitoring of the settlement, we reviewed the settlement agreement and related documents; developed a chronology of monitoring actions taken by NHTSA; and held extensive discussions with NHTSA officials as to their interpretation of those commitments as well as their actions to comply with them.

In developing the statistics, our review included obtaining data on incidents, accidents, and fatalities. In compiling this information, we reviewed data maintained by NHTSA, the Center for Auto Safety, and Ford Motor Company. We reviewed NHTSA and Ford's data on incidents and accidents, including making a limited review of reports received by both NHTSA and Ford. We also reviewed NHTSA's data on park-to-reverse fatalities involving vehicles manufactured by Ford and established a data base of all such fatalities. The data base includes the name of the individual involved, the model year of the vehicle, the fatality date, and the date the fatality was reported to NHTSA. We also obtained fatality data relating to Ford park-to-reverse incidents available from the Center for Auto Safety and compared this data to NHTSA's files. We summarized the incidence of fatalities before and after the settlement agreement. We held extensive discussions with NHTSA and Center officials to determine how they obtained fatality data and how such data was classified. We also obtained data on non-Ford fatalities from the Ford Motor Company and NHTSA. Discussions concerning the non-Ford fatalities were held with representatives of Ford, GM, Chrysler, AMC, and selected foreign manufacturers.

In examining NHTSA's public information campaign, we identified the agency's specific activities designed to inform the public about the danger of leaving an unattended motor vehicle with the motor running. Finally, we held discussions on these matters with both the current Administrator and the NHTSA Administrator at the time of the investigation.

Mr. **Wirth**. Thank you very much, Mr. Peach, for your thorough and careful work.

You have explained the charts over there and the disparity between the two charts. As I understand it, your chart shows that there has not been an abrupt decline of fatalities, and the NHTSA chart shows that there has been an abrupt decline in fatalities since the settlement and the mailing out of the warning. Is that correct?

Mr. **Peach**. That's correct. I might add just one brief point of explanation there, Mr. Chairman. The way I would characterize it, if you look at the 1981 data, you did have that sharp kind of decline that occurred. That was in a period when the mailing went to all the owners of the vehicles along with the label, so there should have been some specific interest focused on it at that time.

If you then begin to track the data past that point of 1981, you see that it has begun to move up again to a point where you are running at the same level of fatalities that you would have found being reported generally during the 1970-to-1979 time period.

Mr. **Wirth**. Let me get some very specific numbers, if I might.

Two years ago at our July 27, 1983 hearing, Ms. Steed testified that the agency knew of only 26 deaths since the settlement attributed to the Ford transmission problem as of that time. The GAO in its thorough way has reviewed all of the data on fatalities in this case.

By your calculations, how many fatalities had occurred as of mid-1983?

Mr. **Peach**. Mr. Chairman, if it would be suitable, what I would like to do would be to give you the data which deals with the end of the year. In other words, cutting it off right in the middle of the year is not something that we have done at that precise point. But if you take it at the end of 1982, for example, let's say December 31, 1982, there has been 44 deaths that NHTSA now has in its system, and then there were an additional 20 that occurred in 1983.

So I can give you those figures for December 31, 1982, and then December 31, 1983.

Mr. **Wirth**. Ms. Steed also told us in July of 1983 that "The rate of fatalities reported per day was 300 percent higher before the completion of the warning label program." Why doesn't your chart show that 300 percent drop in fatalities?

Mr. **Peach**. I can't testify to the precise basis for the 300 percent drop figure. At least I can offer the fact that they did use a new methodology since that time to characterize the deaths as being "yes" or possibly related, and they also had later information that was reported into the system because you continue to get reports that come in from fatalities that may or may not be related to this kind of problem.

Mr. **Wirth**. So there was not a 300 percent drop.

Mr. **Peach**. No.

Mr. **Wirth**. In your view, is the warning label program decreasing the rate of fatalities of Fords that slip from "park" to "reverse"?

Mr. **Peach**. It depends on the starting point that you want to talk about here. The drop occurred in 1981, but the increase has begun to move back up in the 1982 to 1984 period, and if you run across and look at the levels, you find the level of fatalities running in those periods are similar to kinds of levels of fatalities that were experienced during the periods 1976, 1977, 1978, 1979.

Mr. **Wirth**. So the decrease that occurred at the time that the settlement occurred, probably one would extrapolate that because of the mailing. A variety of people were alerted and they were more careful for a period of time and then it went back to where it had been before.

Mr. **Peach**. I think that is a very reasonable hypothesis. Even if you operate on the assumption that the mailing went to all owners of the vehicles, you have to assume that vehicles will continue to turn over and move among people within the population, and then you have the issue of whether the label is attached or not and whether a new owner will become aware, and then you have also the effects of passage of time in terms of people's alertness to the problem.

Mr. **Wirth**. In your testimony you said that NHTSA recently changed its methodology for calculating fatalities. When did this happen?

Mr. **Peach**. It happened in about—let me see—about March 1985 was the period when they changed that. As we would see it, it was somewhat in response to the March 1985 petition that they received from the Center for Auto Safety, where they decided to go back in and reevaluate each one of those cases using a somewhat changed methodology.

Mr. **Wirth**. And this was at approximately the same time, as well, that this subcommittee requested the GAO investigation of NHTSA's procedures.

Mr. **Peach**. It actually would have occurred after that. Your request was in February of this year, and that would have occurred in March.

Mr. **Wirth**. What is NHTSA's methodology for assessing whether a reported death really should be counted as a death? What is that methodology?

Mr. **Peach**. That is discussed a little bit on page 10 of my testimony. What they have done, basically, at this point is to put together a three-person engineering panel, look at all the information that they have available in the case of each one of these reported fatalities, and as I indicated, in the fatality area you generally will have independent third-party investigation.

You have got coroner reports, you have got police reports, you have got other data like that that you can look at, and looking at all the information they have, they make a judgment as to, yes, it's related; no, it is not related; or possibly, because there is not clear information to indicate yes or no.

So they categorize them on that basis using that engineering panel.

Mr. **Wirth**. Is it then true that when NHTSA finally started really looking at fatalities, the agency's own data showed not a dramatic decline, as we had been led to believe, but that the rate of fatalities remained fairly constant?

Mr. **Peach**. Again, I will go back. If you would have looked at the data just after 1981, at that point in time, at the end of 1981, you would have seen a sharp decline; but one of the commitments they made was to continue monitoring information and looking at this case, and as you begin to look at the track moving back up from 1982 to 1984, again you get back up to levels that were experienced based on vehicles on the road in the 1976 to 1979 timeframe.

So overall, I would have to say it doesn't show that dramatic drop if you look at it over the 5 years that we now have had since the settlement.

Mr. WIRTH. In other words, the rate of fatalities remained constant.

Mr. PEACH. Yes; there is a similarity there.

Mr. WIRTH. Why do you suppose that, if fatalities by GAO statistics are really increasing and increasing substantially in relation to the rate that vehicles are retired from the roads, why do you suppose that, given those facts, NHTSA decided to discount this phenomenon and rely only on new criteria of accidents and incidents.

Mr. PEACH. That is a difficult one for me to answer in terms of what NHTSA's rationale may have been. They did use both types of data when the Office of Defects Investigations prepared their July 1985 report, and I would emphasize that in terms of our statistics that we provide today, we basically are using NHTSA data.

I would argue that both the incident data and the fatality data do have importance, but you have got to look at them and interpret them based on circumstances you can apply in terms of the way in which they are collected and what they are used for.

Let me try to explain a little bit about what I'm talking about and at least give you just some observations from looking at the data.

The incident data is basically gathered to give you an indication that you have a problem for which you might want to do some further engineering investigation to decide whether you have a mechanical, a design defect or something that deserves a remedy.

I think if you look at it, you would also find that the incident data tends to be sensitive to publicity that is involved. If you look at the track of incident reports, and there are charts that have been prepared for that, you will find that the peaks on the incident data occur during the 1977, 1978, 1979, 1980, 1981 periods. That was during the period where you had various events occurring.

You had the determination that NHTSA was going to open an investigation and made a public announcement. You had the initial finding of a defect in public hearings. You had Ford publicity and Ford opening a hot line to encourage consumers to call in if they felt they had evidence of this kind of problem.

You had the actual settlement and the mailing out of information to consumers with the label and the letter that went out from Ford.

In other words, what I am suggesting is there was a good deal of publicity that could lead to people reporting incidents and a peaking of the type of incident data that came in, and you see the peaks covering through the 1977 to 1981 period. So I am suggesting that the incident data is very sensitive to publicity, but the reason you are getting incident data and you want to encourage getting it is to try to decide whether you have got enough indication to do an engineering investigation or not.

Fatality data you can characterize a little bit different. The fatalities that occur where you have a driverless vehicle very often in these types of cases happen to be that someone is around and in a position related to the vehicle where something happens and then they happen to get involved with that and the fatality results. It is a somewhat random event, from that standpoint.

One of the things that typifies fatality data, though, is that it is much harder. You have got independent third-party investigation, where you have got police reports, you have got coroner reports or other documents that you can look at to try to decide what happened. So the quality of the data is probably a little better.

I think you also have to consider when you look at the fatality data that the pre-1977 fatality data is likely to be understated somewhat because it had to be reconstructed. That's when they started to gather it. And there also may be some understatement in the last 2 years because of the lag time involved in getting data into the system.

So what I'm suggesting is there are some anomalies here between the incident and the fatality data in that the incident data was rather low in the early 1970's. It peaked and was at higher levels during the 1977 to 1980 to 1981 period, and then it began to go down after the 1981 period. The fatality data—and in the incident data, I would add, the publicity influence seems to be potentially significant there.

The fatality data is fairly hard information that you can track that has been categorized based on engineering analysis by NHTSA, based on documented third-party investigative reports that have been done, and so you can track that as fairly actual kind of data in terms of what is happening. I think you have got to bear those in mind when you try to consider what you think is important about those two types of data.

Mr. Wirth. So the incident and accident data is not verified, but the fatality data certainly is. I mean people either are dead or they are not dead..

Mr. Peach. That is right. And there are third-party investigation reports. As to the question of verification, I think there is an issue that can be raised as to how far you go in verifying incident data, mainly because, as I see it and as I read the statute, you have to have enough incident data to indicate that there is a need to do an engineering investigation, and then you go forward with seeing if there is an actual engineering reason that you can identify through that investigation of a potential mechanical problem, a design problem that needs some remedy.

Mr. Wirth. Finally, Mr. Peach, could it be that NHTSA ignored the increasing fatality rate because this didn't support NHTSA's previously stated position that the warning label program was working?

Mr. Peach. To be honest, I would have no basis for an opinion on that because the fatality information is in the ODI report. In other words, they do have incorporated in the Office of Defects Investigation report they filed in July 1985 incident data. They also have fatality data in there, too.

Mr. Wirth. Thank you, Mr. Peach.

Mr. Rinaldo.

Mr. **Rinaldo**. Thank you, Mr. Chairman.

I had to step out for a while to get to a full committee hearing, but I did read your statement.

Let me ask this. You talk a lot about accident and fatality statistics. From my quick reading of this, I was unaware of any specific conclusions you came to as a result of that data. Are NHTSA's statements concerning these statistics accurate or misleading? I think that is a key question as far as I am concerned. And what conclusions has the GAO made?

Mr. **Peach**. If I was going to comment on the NHTSA data, I would rather comment with regard to any specific statements that they might have made. As I indicated at the outset in our statement, we are doing work here both at Chairman Wirth's request and Chairman Dingell's request, and we still have some additional work to do to be responsive ultimately to both requests, and it is at that point that we hope to pull together the information that we have, and also to define any conclusions that we want to draw from all the information we have pulled together.

Mr. **Rinaldo**. Excuse me. What are you saying? Are you saying that you are not in a position to come to any conclusions? Is that correct?

Mr. **Peach**. I wouldn't want to go too far beyond where my statement is on that, but what we are suggesting in the statement is that there are differences in the way in which you need to look at and factor your judgment into this use of incident and fatality statistics in terms of just how important you see each of them being. They both have some importance, but I think there is some question as to how much weight they should be given.

Mr. **Rinaldo**. Well, let me rephrase the question. Are you suggesting or do you think you will be in a position after further study and after you complete your report to conclude that NHTSA was misleading or inaccurate in what they did, or was what the administrator stated in 1983 supported by the data available to NHTSA at that time; do you have a different conclusion than any of this?

Mr. **Peach**. If you look just strictly at what was reported in 1983 and you look at the cutoff rate—I'm looking at that chart over there, and that looks like a line goes all the way out through 1984, and the cutoff was actually in July 1983. I think I would have to look at that from the standpoint of what data was available to them at the time.

They have done two things since July 1983, or two things that would certainly influence changes. One is they used a completely new methodology to go through and recategorize fatalities as to whether they were "yes" or "possibly related."

Mr. **Rinaldo**. Was that good or bad, in your opinion?

Mr. **Peach**. I think the new methodology was probably an improvement over what they had done before. At least it was a little more systematic and it brought together a panel so you had several judgments being brought to bear, and they had to reach a consensus on whether they felt it fit into the "yes" or "no" or "possible" category.

You also, because of the lagtime involved to get data and statistics into the system, are going to have additional fatalities that are reported. So it is very possible that what was reported in July 1983 was the best data they had at the time. But what we are suggesting by our graph over there is that you do find some changes occurring since July 1983 as more data have come in and as you look at this new methodology and you begin to plot and graph the fatalities for the 1970, 1979 vehicles based on that new methodology and based on the most recent data they have.

Mr. **Rinaldo**. Was her statement of 1983 accurate or inaccurate?

Mr. **Peach**. I don't know——

Mr. **Rinaldo**. Based on the information available to NHTSA at that point.

Mr. **Peach**. I don't know. I will ask if my staff feels they know precisely to comment on the basis of what they had at the time, right at that date, whether it was accurate or inaccurate.

Mr. **Rinaldo**. You can't answer that question, then. Well, can your staff answer it?

Mr. **Hunt**. To the extent, sir, we believe that as far as the information that was available at that point in time with regard to fatalities, and the way NHTSA report, on the actual numbers, it is probably correct, yes, sir. But they did not compute it on the basis of fatality rate. If you look at the chart, sir, that is based on a number count as to the fatalities that were occurring.

Mr. **Rinaldo**. Since you can't come to any definite conclusions, let me ask you this. Would you be able to conclude that NHTSA did not effectively monitor the settlement agreement at this point?

Mr. **Peach**. I'm going to choose my words carefully here. Their monitoring was passive, very passive and limited to very few contacts with Ford during 1981 and 1982, and up through the hearings that were held by this subcommittee in July 1983. After the hearings before this subcommittee, there was increased activity by NHTSA to monitor aspects of the settlement agreement. This included some changes in their public awareness campaign, some agreements to go out and investigate some of these fatalities where there was not good information available to make a decision on.

What I would say is that most of the monitoring activity appeared to us to occur pursuant to the interest expressed by this subcommittee in July 1983, and that for the first 2, 2½ years after the settlement, there was little done.

Mr. **Rinaldo**. Would you say that NHTSA did a poor job?

Mr. **Peach**. During the first 2½ years, yes. I think it would be correct to say, given the paucity of efforts that were involved, that it was not consistent with the statement that was said in the letter that was sent on the settlement agreement where they said they would continue to be involved in this area enough to decide whether there was any more to be done.

Mr. **Rinaldo**. Are they still doing a poor job?

Mr. **Peach**. I think they are doing a better job now because they have been more active gathering the data. They recently got this additional information from Ford. They have analyzed it thoroughly to try to decide how it fits into any kind of decisions they need to make at this point in time.

Mr. **Rinaldo**. Do you think that NHTSA should reopen its investigation of the Ford transmission case?

Mr. **Peach**. I don't have a position on whether they should or should not reopen.

Mr. **Rinaldo**. I'm asking your opinion now. What is your opinion? You are the one that took the study. Will you have an opinion when you complete the study?

Mr. **Peach**. I don't know whether we will have an opinion when we complete the study or not because ultimately the decision as to whether there is a defect or not is what drives it, and that decision becomes very much of an engineering decision. They have to decide based on engineering analysis that they can identify and define a defect or design problem which is subject to some kind of remedy that can be done by the manufacturer, and I am not in a position—I have looked at the information, but I am not in a position to make that kind of engineering judgment.

Mr. **Rinaldo**. At this point in time, based on the study that you undertook, what would you have done differently if you were the administrator of NHTSA? You know, I would like to know what NHTSA should be doing that they haven't done.

Mr. **Peach**. There are two things that I would consider at this point, and I would like to reserve the right that we will continue to evaluate these actions as we go forward.

One is I would at least consider whether or not, given the increased fatality rate that we are observing, there is a desire to at least get in the hands of the current owners of the vehicle some information indicating the potential for a problem in this area and fixing their attention on it. That is first.

Second, as I understand it, the arrangement to send a letter and a label to these vehicle owners pursuant to a settlement is a unique type of a settlement that was reached by NHTSA. In the other cases they have been involved with, they either decide there is a defect and go to a recall, or not decided to go in that direction.

To the extent this is a unique event and involving the number of vehicles, and to the extent NHTSA may be faced with a similar situation in the future, I would think it certainly provides a good test case to evaluate just how effective this action was or was not on an after-the-fact basis as a possible remedy to deal with problems in the future. I would think that that could be done.

There is one other thing that I might add that I think you need to have in mind, at least as you look at the potential for what can be done and what are the difficulties of the case. As I understand the Motor Vehicle Safety Act, there is an 8-year statute of limitations in terms of how far NHTSA can go back and require a recall by a manufacturer, and the date that starts clocking the 8-year statute of limitations is when they make a final finding of defect.

Now, they never made a final finding of defect here, and they still have not done that. Should they decide to do anything further in terms of making a final finding of defect, there are certain processes they would have to follow to get there, and then you would have to go back, and you can only go back 8 years from the date they would make that final finding.

The point I'm trying to make is if you had a final finding of a defect today, you could only go back and require recall of vehicles purchased after July 31, 1977, or 1978. I'm sorry. It's an 8-year statute. 1977. So you could only go back that far.

So the clock is running. One would presume you could get to a point where that 8-year statute of limitations would run out fairly quickly.

Mr. **Rinaldo**. Based on the two points you just mentioned, do you now feel that NHTSA should reopen its investigation of the Ford transmission case?

Mr. **Peach**. As I said, I don't have a specific position on whether they should reopen.

Mr. **Rinaldo**. What would you do if you were the administrator? What would you do in addition to those two points that you just mentioned?

Mr. **Peach**. I wouldn't want to take a position at the hearing today. I don't know whether we will come out with anything before we finish, but I don't think it is our place to take a position, and I will tell you that, having looked at a lot of information here, there is enough conflicting kind of information and evidence and data that has been presented, and given where we are in 1985, it is not a simple or an easy kind of question. There are tradeoffs with going either way.

Mr. **Rinaldo**. If it was an easy question, I wouldn't have to ask it of you; I would know the answer.

Let me take it a step further. When do you expect to complete this report?

Mr. **Peach**. We hope within the next month or two to have completed our work, but there are continuing questions that come up, and this is a complex enough thing that I don't want to leave any loose ends untied when we finish.

Mr. **Rinaldo**. Mr. Chairman, I want to commend you and Chairman Dingell for requesting this investigation and report, but I would also at this point like to request unanimous consent that the GAO be directed in the final report to give us a list of or at least some very explicit conclusions so we know exactly what their opinion is after this massive study so that we can be guided properly on any possible action that this subcommittee or full committee would want to take.

Mr. **Wirth**. Mr. Peach, let me ask you, how does that differ from the request that this subcommittee has made to GAO?

Mr. **Peach**. Well, I don't think your request asked us to reach a bottom line, and I think that one of the things you have to keep in mind is where our responsibilities are and begin and end as related to the responsibilities of the agency that has the responsibility for administering the program.

In most cases where we are faced with this kind of situation and where there is a very substantial kind of policy judgment involved, it's not unusual for us to try to indicate just what are the key factors that look like they need to be considered in looking at the status of this case and to try to categorize those.

Mr. **Rinaldo**. I don't think any of us are automotive experts or safety experts. I don't profess to be one. I think at the very least we could get a lot of facts, figures, statistics, and, I guess, inferentially draw any kind of conclusion we want to. If at the bottom line you can't give us conclusions, could you at least give us recommendations, specific recommendations so that we know whether or not we should proceed any further and, if so, how?

Mr. **Peach**. We will look at that as carefully as possible. And I did at least—while it doesn't deal with the question of doing anything specifically further on the investigation, I did have a couple of suggestions as to what they could do to learn from the experience they have had here and not be faced with this situation in the future in the same way. But we will try to look at that as carefully as we can, Mr. Rinaldo.

Mr. **Rinaldo**. OK. And I would appreciate it, then, if we could get some recommendations because I think it is essential that we do get to that bottom line.

Thank you, Mr. Chairman.

Mr. **Wirth**. Thank you, Mr. Rinaldo.

Mr. Bryant.

Mr. **Bryant**. Mr. Peach, is it true that people are still dying because of accidents involving park-to-reverse situations with Ford automobiles?

Mr. **Peach**. Yes, that is what the chart would indicate. And again, this is based on NHTSA's analysis itself in terms of having the engineering people look at the kinds of reports they have.

Mr. **Bryant**. Couldn't we then conclude that the policies they have been following are a failure in terms of stopping deaths and injuries?

Mr. **Peach**. In terms of stopping the death problems, what our chart would suggest is that the letter and the label had a good effect in 1981 but the effect tended to wear off since that time.

Mr. **Bryant**. Even in 1981, people died, didn't they?

Mr. **Peach**. Yes.

Mr. **Bryant**. So all you calculated in 1981 was a slight decline in the rate.

Mr. **Peach**. Well, I would say it at least would show a fairly sharp kind of a decline, but it goes back up.

Mr. **Bryant**. Did people die in 1981?

Mr. **Peach**. Yes; they did.

Mr. **Bryant**. And they are dying at a greater rate now than in 1981; is that correct?

Mr. **Peach**. That is correct.

Mr. **Bryant**. So my point is this. Isn't it fair to conclude that the NHTSA organized agreement with Ford has been a failure in terms of stopping people from dying?

Mr. **Peach**. I think that is a fair observation for you to make. What I suggested in the comment to Mr. Rinaldo——

Mr. **Bryant**. Well, let me just get you to answer me yes or no, if you could, and then I will let you follow up. Is it or is not a fair conclusion that the NHTSA program for dealing with the Ford park-to-reverse case has been a failure in terms of stopping people from dying? Is that correct?

Mr. **Peach**. Yes.

Mr. **Bryant**. Thank you. If you want to modify that, I would——

Mr. **Peach**. Well, the point that I was making earlier was that if I looked at what has happened with the fatality statistics, I think that very issue that you have stated there is raised, and I would think I would want to take a careful look, at least, if nothing else, on a retrospective basis to find out how successful we believe this kind of effort is or isn't in terms of remedying a problem.

Mr. **Bryant**. That may be of some value in the event we run into a problem like this in the future. It is certainly of no solace to those that have been injured and killed by this in the past.

Mr. **Peach**. I understand.

Mr. **Bryant**. And that is what I think we are worried about at the present time.

In July 1985, Ms. Steed denied the Center for Auto Safety's petition to conduct an expedited investigation of the Ford transmission problem. In large part, the denial was based on a NHTSA analysis that showed the rate of Ford park-to-reverse accidents and incidents appeared to be declining.

That is correct; that is your understanding, is it not?

Mr. **Peach**. I would say it is my reading of the letter that there were two reasons that were associated. The first reason that you suggested is correct. They said basically that the incident data and fatality data both for Ford and other vehicles, they considered that, and they also made the statement that there is no new engineering information, as they see it, that has been brought to light, and those two reasons were cited.

Mr. **Bryant**. First, that there was a decline in the rate of park-to-reverse accidents, and second, that they had no new engineering data. That was the reasons they gave for declining to open the case——

Mr. **Peach**. Yes; as I understand it.

Mr. **Bryant**. Now, I think your statement indicates that NHTSA didn't use its own data base of 23,000 complaints that was developed during the investigation of the Ford transmission case; is that correct?

Mr. **Peach**. That's correct. Those 23,000 complaints, as I understand it, involved about 12,000 vehicles, and that data base was the subject of some criticism by Ford during the the NHTSA investigation because of it including double counting or duplicates or other things which they felt overcounted the number of instances.

Mr. **Bryant**. Why do you make that observation?

Mr. **Peach**. I think it is fair to note that NHTSA never went through to try to clean up that 23,000 data base and determine the extent to which there was double counting, overcounting or other things like that. That was an issue that was never resolved because, as I understand it, NHTSA did not try to review and clean up the data base to take care of that.

Mr. **Bryant**. But that is just another way of saying they never did use their data base, isn't it? If you use the data base, you review, you clean up, you take out what is valuable and leave behind what is not valuable; and they did not do that, did they?

Mr. **Peach**. That's right. I will give you one example——

Mr. **Bryant**. I just want to get to the point. They didn't do that, did they?

Mr. **Peach**. No.

Mr. **Bryant**. In sum, they didn't use their data base, did they?

Mr. **Peach**. No.

Mr. **Bryant**. OK. Now, what happened to the data base of 23,000 complaints that was compiled by the agency?

Mr. **Peach**. It is located on the fifth floor of the DOT building in files. We have observed it, and as my staff tells me, some of it is in files, some of it is just sort of sitting on the floor, stacked.

Mr. **Bryant**. Unused.

Mr. **Peach**. At this point, yes.

Mr. **Bryant**. OK. It is also correct, I think, that NHTSA's analysis of declining accidents and incidents was based on submissions from the Ford Motor Co.; is that correct?

Mr. **Peach**. OK. Primarily that. I think it is fair to note that they also used data that they gathered on non-Ford vehicles, so they tried to look at what had happened on non-Ford vehicles and also some data that they had from their own Fatality Accident Reporting System.

I would say that was additional data to try to offer in addition to the Ford data.

Mr. **Bryant**. But with regard to the Ford park-to-reverse problem, the data they used was data they got from the Ford Motor Co., not from the NHTSA files, is that correct?

Mr. **Peach**. That is correct, although again it is fair to recognize there is some exchange that goes on. To the extent NHTSA got anything reported to it after 1980, it would send those on to Ford and say: Here are some reports we got. Plus Ford had their own sources for getting reports. So some of the data in that system was information that had been forwarded over to Ford by NHTSA, but basically the data base they are using is one that was compiled and put together by Ford. It basically provides NHTSA just straightforward information on such things as the name, the State, the date the incident occurred, and whether or not there was any damage.

Mr. **Bryant**. How is it, after your having looked at it intensively, that an agency that is mandated by statute to collect and analyze data, that receives a significant budget allocation for data analysis, and presumably has a certain amount of technical expertise to gather and evaluate its own data, relies on the data developed by the same manufacturer it is supposed to be monitoring in order to make a decision for the American people?

Mr. **Peach**. I think I would have to say that NHTSA can best answer that.

Mr. **Bryant**. You could not find any justification for that?

Mr. **Peach**. No.

Mr. **Bryant**. Has NHTSA verified or investigated any of the data submitted to it by Ford?

Mr. **Peach**. To my knowledge, no. I would add, and I referred to this earlier, that it is not unusual for your incident data to not be verified. You are basically trying to look at incident data——

Mr. **Bryant**. If it's your incident data, though, right?

Mr. **Peach**. Yes.

Mr. **Bryant**. Well, that wasn't their incident data. That was Ford's data, wasn't it?

Mr. **Peach**. Yes; that was Ford's data. But in most of the cases, even where NHTSA has gotten incident data in the past, where it has been reported to them, what they do is they send a questionnaire out to the individual to fill in to give them some additional information.

If there is no fatality it is not fully investigated or verified beyond that. Basically what you are using that incident data for is to see if you have got enough volume of incidents with enough potential indication of severity to go into an engineering analysis.

Mr. BRYANT. I'm not sure I understand what you just said, what bearing that has on the point. The point I am raising is that NHTSA apparently did not verify or investigate any of the data submitted to it by Ford.

Mr. PEACH. No; they did not verify or investigate, and in point of fact, there is no way they could verify or investigate because the information they got from Ford did not contain material like addresses, phone numbers, or actually any specific statement of the problem. So, absent that, there is no way they could even go back and attempt to on a test basis verify any of it.

Mr. BRYANT. So the material they got from Ford was not verifiable even if they had had the will to verify it; is that correct?

Mr. PEACH. Right. They would have needed more information to verify it.

Mr. BRYANT. They didn't even get enough information from Ford to verify it, but they relied on the Ford information to reach their conclusions.

Mr. PEACH. That's correct.

Mr. BRYANT. Did NHTSA ask Ford for information that would allow it at any time to verify it? Did you find any indication of that?

Mr. PEACH. To my knowledge, no; they did not.

Mr. BRYANT. Well, it is just hard to imagine that that would go on. I don't know what to observe beyond that.

I think you testified earlier, or rather gave us in your initial conclusions, that NHTSA did not view its monitoring responsibilities to include determining the extent to which labels reminding vehicle owners of certain safety operations were placed on the vehicles.

Did you find any justification, in looking at the NHTSA files or talking to the employees, for them concluding that their responsibility to monitor this program would not also include the responsibility to determine whether or not the labels that they were mailing out were being stuck on the dashboards of the cars?

Mr. PEACH. I believe there is a reference also in my statement, and it's about the best I can do in that area. that it was their judgment that the warning letter itself was the more substantial part of the action that was being taken as contrasted to the label. So they are saying their key emphasis was on the warning letter that was being sent out, as contrasted to just the label and whether the label actually got placed on the automobile.

Mr. BRYANT. Did you learn that that was their interpretation orally from Ms. Steed or was there a document, or what made you think that?

Mr. PEACH. I think that is cited in a letter of July 1983 back to this subcommittee. So it was cited in that letter coming back.

Mr. BRYANT. That's all I have for now, Mr. Chairman.

Mr. WIRTH. Let me, if I might, Mr. Peach, just summarize what I think we have learned so far. We have learned from you this morning that the fatality rate has not dramatically declined as Ms.

Steed said in 1983 and subsequently. The GAO data says that the fatality rate has increased since the settlement.

Second, we have learned that NHTSA relied on accident and incident data in deciding not to pursue the case. GAO has told us that accident and incident data are unverifiable and came from the Ford Motor Co.

You have told us that NHTSA did not start collecting data until after we requested our investigation and after the appeal from the Center for Auto Safety. You have told us that NHTSA did not vigorously pursue a public information campaign, and you have told us that they did a poor job—your words—of monitoring the warning and label program.

From that it seems to me we have concluded, following up Mr. Bryant's question, that the fatality rate from park-to-reverse has increased since the letter and the decals were sent out, that the remedy by NHTSA was therefore not an effective one, and that NHTSA has refused subsequently to do anything further about this problem.

That is where we are at this particular moment.

Do you have any disagreement with any of that as a conclusion?

Mr. **Peach**. I would leave those last three conclusions to be the ones that you see yourself drawing from the type of information we have been able to place before you today. The first statement in terms of the summary of what I have tried to lay before you today, I think, is entirely accurate.

Mr. **Wirth**. Thank you very much.

Mr. Dingell.

We welcome the chairman of the full committee, who has joined us today, and who is the chairman of the Subcommittee on Oversight and Investigations, who had with us requested help from the GAO in this particular situation.

Mr. **Dingell**. Thank you, Mr. Chairman. I appreciate your kindness in recognizing me at this time.

Mr. Peach, it is always a pleasure to welcome you before the committee and its several subcommittees. You and GAO have always done a fine job in serving the interests of this committee.

I believe we are discussing here today, Mr. Peach, the opinions and the views that were requested by me as the chairman of the Oversight and Investigations Subcommittee; is that correct?

Mr. **Peach**. That's right. We are discussing the Ford park-to-reverse transmission incident, specifically directing ourselves at the three questions that Chairman Wirth asked us to address. We are undertaking work, as you know, at both the request of Chairman Wirth and at your request as chairman of the Subcommittee on Oversight Investigations, and we are still in the process of completing that full body of work.

Mr. **Dingell**. You have indicated you are still in the process of completing the requested work?

Mr. **Peach**. Yes, the full body of work that was included in both requests. We still have some questions that we are working to answer there.

Mr. **Dingell**. How soon do you anticipate the full work that was requested will be completed?

Mr. PEACH. We hope that within the next 1 to 2 months. I want to provide myself just a little flexibility because we want to see if there are further questions that flow from this hearing on which information will need to be gathered, but we would hope to finish the full body of work within the 1 to 2 months.

Mr. DINGELL. I am less concerned with speed than I am accuracy in the requested work, so I am ill disposed to press you. It appears that you are proceeding diligently on the work at hand, and I'm not prepared to criticize speed. I am more interested in accuracy, and I think that you are complying with that.

Mr. PEACH. I appreciate that, Mr. Chairman.

Mr. DINGELL. How long will it take you after you have completed your study to complete the report to the subcommittee?

Mr. PEACH. When I cited the date of saying I hope that we will wind everything up, I'm hoping that that 1 to 2-month period will provide us an adequate amount of time to gather the information we have, assimilate it and develop the report.

Mr. DINGELL. I want to observe that that is going to be a report that is going to be completed with rather extraordinary speed even for your agency.

Mr. PEACH. Well, we do have a good deal of the data in hand, but some of it we still have to pull together, and we are hopeful that we can do that. Sometimes we are criticized for not being as quick as some people would like, so we are trying to work on that, too, if we can.

Mr. DINGELL. We have always been interested in accuracy in this committee.

What percentage of the work in this study have you completed at GAO?

Mr. HUNT. Mr. Chairman, I would state that we are probably close to 90 to 95 percent complete.

Mr. DINGELL. Ninety or ninety-five?

Mr. HUNT. Yes, sir, I would.

Mr. DINGELL. What part of the work is as yet incomplete? Either what part of the work or what subject matter?

Mr. PEACH. I can cite some areas. One, we are looking at several questions which were raised by you which are in the legal arena, and we are working with our general counsel to resolve those particular issues.

We are also doing some work on certain of the statistical data in order to place it in a better format, and particularly we are looking at the fatality data for the non-Ford vehicles in order to try to place that in a consistent format so that it can be most useful.

Mr. DINGELL. Have you completed your scrutiny of the fatality data?

Mr. PEACH. We have completed our scrutiny of the fatality data for the Ford vehicles. We have all the raw data in for the non-Ford vehicles, and we still had a little bit more of analysis that we wanted to do on the non-Ford vehicles in terms of what would be the best way to present that data.

Mr. DINGELL. Have you compared, then, the Ford data with the non-Ford data?

Mr. PEACH. We include those figures in the statement or in the testimony for the comparable period of 1970 to 1979, we include those in terms of the raw numbers of fatalities, but we still have to get and include it and do the analysis in terms of numbers of vehicles on the highway so that it would be comparable to the kind of analysis we presented on the chart on the wall.

We have done the Ford data based on vehicles on the road.

Mr. DINGELL. I'm trying to understand how the Ford data and the other data relate in view of the fact that you tell us the data on the non-Ford vehicles is raw.

Mr. PEACH. Numbers of fatalities. When I refer to raw data, we have information on the number of fatalities reported by year for the non-Ford vehicles.

Mr. DINGELL. Is that reliable?

Mr. PEACH. My understanding is it's reliable. It's the NHTSA data, was collected through NHTSA, and it has been run through the same type of analysis that NHTSA did for the Ford data in terms of deciding whether the events or fatalities were related to park-to-reverse incident: "yes," "possible," or "no."

Mr. DINGELL. What are you saying?

Mr. PEACH. In each case, NHTSA has had a three-person engineering panel look at each one of both the Ford and non-Ford park-to-reverse incidents that have been provided to them where they had data, and they have categorized them as being either "yes"—related to a park-to-reverse incident, "no"—the evidence would indicate they are not related, or "possible"—where they do not have adequate evidence to either put them in the yes or no category.

Mr. DINGELL. Now, have you looked at the incident data as well as the fatality data?

Mr. PEACH. There is not good incident data that NHTSA has in that area where you are dealing with the non-Ford vehicles.

Mr. DINGELL. How about with regard to the Ford vehicles?

Mr. PEACH. With respect to the Ford vehicles, there are two data bases that are involved. NHTSA, when they did their original investigation, had a data base of some 23,000 incidents involving 12,000 vehicles. In their most recent analysis done in 1985, NHTSA has used a different data base which is a Ford-developed data base, which has some 19,000 incident reports related to 1970 to 1979 Ford vehicles, and that is what NHTSA used in its most recent analysis in July 1985.

Mr. DINGELL. So you had two data bases. Now, how good were each of these data bases and how reliable were each of them?

Mr. PEACH. They both represent unverified incident reports.

Mr. DINGELL. So you say they were unverified incident reports?

Mr. PEACH. That's right.

Mr. DINGELL. I'm curious. If these data are bottomed on unverified incident reports, how valid are they and how verifiable are they and how reliable are they?

Mr. PEACH. At least from my standpoint, an incident report, they basically record the information that the person who either calls in or writes in has given them, and in NHTSA's case, and I'm not quite sure how Ford handles it, NHTSA sends a questionnaire to the complainant asking for additional information.

But the incident data—

Mr. DINGELL. What does that mean in terms of verifiability?

Mr. **Peach**. Generally, they do not go back and do further verification on incident data. If there are adequate number of incident reports, and this is a judgmental area on NHTSA's part, once you have——

Mr. **Dingell**. So you are saying these data are bottomed on NHTSA's judgment? I'm trying to figure out how reliable this is, how verifiable it is.

Mr. **Peach**. Well, let me try to make a point and see if it sheds any light on this.

Mr. **Dingell**. So far you have told me it's judgmental, and that raises some questions in my mind about verifiability.

Mr. **Peach**. NHTSA has to make a judgment as it gets incident data in as to whether there are enough incidents occurring that they believe it appropriate to move to a second or other stage and to do an engineering-type analysis, to decide based on engineering analysis whether or not there is a possible problem that exists.

Mr. **Dingell**. Let's try and understand this. For purposes of the act, what type data should be used by NHTSA in defect cases? Should it be fatality data or incident data?

Mr. **Peach**. I think they have got to use both. I think the incident data can be used as one type of indication that there is a problem that exists that they need to do more detailed engineering investigation. The fatality data is another kind of indicator of whether you have a problem or not, and it also has the particular attribute that you do have more firm information on fatalities. You have had third party investigations like police reports, coroners' reports or actually NHTSA hiring or having someone go out and do an independent investigation of just exactly what happened and caused the accident and circumstances surrounding it.

Mr. **Dingell**. First of all, have the GAO lawyers looked at this as to whether it should be incident or it should be fatality data?

Mr. **Peach**. I'm not sure that the lawyers could shed light and I'm not sure the legislation sheds light on what type of data NHTSA is supposed to consider.

Mr. **Dingell**. Well, what is NHTSA's experience with regard to defect data and defect cases?

Mr. **Peach**. You are talking about their defect cases on a broader universe?

Mr. **Dingell**. Yes.

Mr. **Peach**. OK. It is my understanding that where they generally start and stop with it in many cases is they look at the incident data and then decide whether they need to go into an engineering investigation or not. They also collect fatality data and use that.

Mr. **Dingell**. What is the reliability of incident data, as you see it here? Let's say in defect cases. What is the reliability of incident data? What does it tell you and how reliable is it?

Mr. **Peach**. I would say its reliability is probably at about a midpoint because it's not verifiable.

Mr. **Dingell**. About midpoint because it lacks——

Mr. **Peach**. Because it is not verified at all; but it is really more a pure volume kind of question once you begin to get a number of incidents flowing in to decide if you have a kind of a problem being reported through these incidents and enough of them that you need to look at it in more depth.

If you look at the Ford case, NHTSA opened, actually, this initial investigation in the Ford area based on 31 incidents——

Mr. DINGELL. Thirty-one. Now, what is that in terms——

Mr. PEACH [continuing]. That were reported to it.

Mr. DINGELL. Is that a large number of incidents?

Mr. PEACH. That is not a large number, but they have——

Mr. DINGELL. What can you tell about the reliability from 31 incidents? Have these been verified or investigated?

Mr. PEACH. As I understand the process, they opened the Ford case based on 31 incident reports, and there was some publicity generated, soliciting individuals who believe they had this type of problem to report it. And following that, they got a considerable number of reports, and it's during the period 1977 to 1981, while there was a lot of concern about this case, that there were a substantial number of incidents reported to NHTSA and to Ford.

Mr. DINGELL. Now as I understand it, you have questioned NHTSA's use of Ford incident, fatality, and accident data; is that correct?

Mr. PEACH. What we have tried to lay on the record is just exactly what data they've used and how they have used it.

Mr. DINGELL. But you've questioned it, have you not, today?

Mr. PEACH. No. I think what I've tried to——

Mr. DINGELL. You have not questioned it?

Mr. PEACH. What I've tried to suggest is, I've tried to place the context in which incident data is used, and the point that I tried to make with the incident data is that you find, as you look at it, that it seems to be very sensitive to the amount of publicity that has been generated around the case during the 1977 to 1981 period.

Mr. DINGELL. On the basis of your testimony, was it correct or incorrect of you to raise a question as to the use of Ford incident and fatality data?

Mr. PEACH. What I think my testimony raises a question more about is the question of the use that has been made with fatality data to this point.

Mr. DINGELL. The use of fatality data?

Mr. PEACH. Right.

Mr. DINGELL. Explain that, if you please?

Mr. PEACH. All right. As we look at the fatality data—and there are two charts displayed here; one was a chart that this subcommittee had placed before it in about July 1983 at the time of the hearings, which is the second chart there, which shows a rather sharp decline occurring in fatalities since the settlement, in terms of absolute number since the 1980 settlement.

We have looked at that data. NHTSA has used a new methodology to categorize it. They've had additional fatalities that have been reported. And charting out that data, what it shows is that, while the decline occurred in 1981, the first year after the settlement, the fatality data since 1981 has begun to rise again, and that in the years 1982 to 1984, you have fatalities being reported in the same general level as were being reported in 1977 to 1979. So you've got an increase in the fatalities.

Mr. DINGELL. Mr. Chairman, I note my time has expired, and I want to thank you for the courtesy that you have extended to me.

I would ask unanimous consent that I be permitted to submit questions to the witness for purposes of the record and that they be inserted in the record in the appropriate place.

Mr. **Wirth**. Without objection, the record will be held open for those responses.

Mr. **Peach**. We'd be pleased to respond to them. [See p. 89.]

Mr. **Wirth**. Thank you, Mr. Chairman.

Mr. Peach, we thank you very much again for your helpful testimony, and we lookd forward to working with you in the completion of this report.

Mr. **Dingell**. Mr. Chairman, could I request that Mr. Peach perhaps remain while we hear from Ms. Steed, because I think that there may be some questions to be directed to him as we proceed.

Mr. **Wirth**. If that fits your schedule, Mr. Dingell is hoping you might be able to stay during Ms. Steed's testimony as well.

Mr. **Peach**. I had a commitment to leave town right after the hearing.

I was just wondering how long you thought we might be going.

Mr. **Wirth**. Could you leave your two staff people, then?

Mr. **Peach**. Yes, I would be glad to, and I will also try to remain for awhile, if that's all right.

Mr. **Wirth**. Whatever would fit your schedule, and you could leave your two staff people.

Mr. **Peach**. Right.

Mr. **Wirth**. Thank you.

Our second witness this morning is the Honorable Diane K. Steed, the Administrator of the National Highway Traffic Safety Administration.

Ms. Steed, thank you for joining us. You might begin by introducing your colleagues at the table with you. You are familiar with the rules of the subcommittee. We will include your statement in full in the record, and the record will be left open for whatever written questions and answers may go back and forth between the subcommittee and the agency.

We thank you for joining us this afternoon and look forward to your testimony.

Thank you.

STATEMENT OF DIANE K. STEED, ADMINISTRATOR, NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION, ACCOMPANIED BY GEORGE PARKER, ASSOCIATE ADMINISTRATOR FOR ENFORCEMENT; AND JEFFREY MILLER, CHIEF COUNSEL

Ms. **Steed**. Thank you, Mr. Chairman.

With me today are, to my left, Mr. George Parker, who is my Associate Administrator for Enforcement; to my right, Mr. Jeffrey Miller, who is Chief Counsel of the agency.

As you know, the agency recently denied a Center for Auto Safety petition to reopen the investigation on Ford transmissions because we felt there are not sufficient reasons to expect further investigation into this matter to result in a determination that the vehicles in question contain a defect within the meaning of the Vehicle Safety Act.

The staff of NHTSA's Office of Defects Investigation prepared a report of its review of the information relevant to the agency's consideration of the petition. My decision to deny the petition is based on the analysis contained in the staff report, and on my judgment that no new engineering evidence has been developed and that the additional data concerning incident, accident, and fatality trends tends to support earlier decisions to adopt and abide by the terms of the previous administration's settlement agreement, December 30, 1980.

As you know, no final determination of defect was ever made. After the initial determination and the subsequent public hearing, Secretary Goldschmidt decided to negotiate a settlement with Ford that recognized the human factors involved in these transmission incidents.

Since that time, both the U.S. District Court for the District of Columbia and the U.S. Court of Appeals for the District of Columbia Circuit affirmed the reasonableness of that settlement and upheld the Secretary's and NHTSA's authority to enter into the specific settlement.

In ruling that the Secretary had not acted arbitrarily or abused his discretion in reaching the settlement, the U.S. Court of Appeals found that the existence of a defect was not conclusively established and that the Department would have faced great difficulties in sustaining its burden to prove the existence of a defect, because the interaction of the driver and the vehicle seemed a critical factor in transmission malfunctions.

The March 6, 1985, petition from the Center for Auto Safety and others, coming 4 years after Ford's 1981 campaign, offered the advantage of somewhat greater perspective due to the passage of time, but it did not provide evidence contradicting the agency's earlier assessments or suggest that the issues presented by the case are now any less difficult to resolve.

The only information NHTSA has obtained or learned about since the settlement of agreement consists of reports of accidents or incidents of both Ford and non-Ford vehicles, which were previously unknown to the agency. This information does not tend to support the allegation that inadvertent movement incidents are limited to 1966 to 1979 Fords or that such incidents were due to a vehicle defect.

In responding to the March 6 petition, the agency staff conducted an exhaustive analysis of available data, which went far beyond the review and analysis of the evidence presented in support of the petition. We requested Ford to provide substantial new submissions, including updated incident and accident data. Ford provided this new data and also much beyond that which we requested.

In addition, we requested and received from General Motors, Chrysler, and American Motors information concerning their customers' experience with so-called park-to-reverse incidents in their vehicles, as well as any design changes that they might have undertaken since 1980.

We reviewed and analyzed all of this information and other data sources to assist us, including our own fatal accident reporting

BEST COPY AVAILABLE

system, or FARS, which affords an indication of accident rates, free of bias due to publicity.

This review and analysis convinced me that park-to-reverse incidents occur among vehicles made by all major manufacturers. While reported incident rates for Ford vehicles have been higher than those of other manufacturers, this observation does not go beyond the initial determination of June 1980, which was vigorously disputed by Ford and which was settled by the Department in December 1980.

The March 6 petition urged us to consider Ford's 1980 design changes to automatic transmissions as a ground for further investigation. While the design changes were apparently intended to improve the function of the park apply systems in Ford vehicles, they do not, in and of themselves, constitute proof of a safety-related defect under the Safety Act.

Moreover, when reported incident rates were normalized for vehicle population size, the 1980 changes have not resulted in a substantial reduction of incidents, raising a question about their appropriateness as a recall remedy, even if we were to find a defect in these vehicles.

Our overall review of the data suggests that the 1980 changes have not significantly influenced the rate of reported incidents. It, therefore, does not appear from the data we have that a recall campaign, in which a mechanical alteration of the vehicle's transmissions would be attempted, promises any greater reduction of park-to-reverse incidents than has already been accomplished by Ford's 1981 notification and warning label campaign, pursuant to the settlement agreement.

No evidence presented since the date of the initial determination convinces me that a final defect determination is currently warranted or even likely if further investigation is undertaken.

The evidence also continues to support the inference that drivers who misposition their gear shift levers and who fail to take precautions, such as turning off the engine and setting the parking brake, have contributed to park-to-reverse incidents.

I must also note that the effect of publicity associated with this matter continues to make judgments concerning the differences in reported incident rates extremely difficult.

I want to emphasize in the strongest terms possible that the agency will intensify its campaign to heighten the public's awareness of the importance of careful driving practices. I believe that heightened publicity and information designed to increase public awareness of this problem can have a positive effect. Given the new information that inadvertent movement incidents are common to all cars, we need to broaden as well as intensify our campaign.

Therefore, I have directed our staff to identify new ways to focus public attention on this problem. These could include appropriate materials for driver education programs and other general education materials, including press releases and background information for the news media.

In addition, all persons who call the agency's hot line or who write the agency are advised of NHTSA's investigation, and of the warning letters to owners that vehicles which have not been properly set in park, might slip into reverse without warning, and of the warning labels to remind drivers of the hazard of failing to secure their vehicles in park, apply their parking brakes, and shut off their engines before leaving their vehicles.

In concluding, Mr. Chairman, I would like to add that this is a very, very difficult matter before the agency. It is also, as you can tell, a very emotional one, especially when you talk with the families of victims or victims themselves.

But as a Federal agency, we cannot base our findings on emotions. We must deal with the facts. And the facts before the agency lead us to believe that we cannot find convincing evidence of a mechanical defect. Therefore, we have denied the center's petition.

This concludes my prepared statement, and we would be pleased to try and answer any questions that you all have.

[The prepared statement of Ms. Steed follows:]

STATEMENT OF DIANE K. STEED, ADMINISTRATOR, NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION, BEFORE THE SUBCOMMITTEE ON TELECOMMUNICATIONS, CONSUMER PROTECTION AND FINANCE, HOUSE COMMITTEE ON ENERGY AND COMMERCE, AUGUST 1, 1985

Mr. Chairman and Members of the Subcommittee:

Thank you for your invitation to appear before you today on the Ford Transmission case. Accompanying me are Jeffrey Miller, our Chief Counsel, and George Parker, our Associate Administrator for Enforcement.

I welcome the opportunity to discuss the Agency's efforts in this matter and our recent response to the petition of the Center for Auto Safety and others to reopen the investigation into the alleged failure of automatic transmissions installed in 1966 to 1980 vehicles manufactured by Ford Motor Company to hold or engage in the Park position. I denied the petition because there are not sufficient reasons to expect further investigation into this matter to result in a determination that the vehicles in question contain a defect within the meaning of the National Traffic and Motor Vehicle Safety Act.

The staff of NHTSA's Office of Defects Investigation prepared a report of its review of the information relevant to the agency's consideration of the petition. My decision to deny the petition is based on the analysis contained in the Staff Report, on my judgment that no new engineering evidence has been developed, and that the additional data concerning incident, accident, and fatality trends tends to support earlier decisions to adopt and abide by the terms of the previous Administration's settlement agreement of December 30, 1980.

The original NHTSA investigation of this alleged defect was one of the most intensive inquiries in the agency's history. NHTSA's June 6, 1980 initial defect determination covered some 23 million 1970-1980 Ford vehicles with C-3, C-4, C-6 and Jatco automatic transmissions. Throughout the investigation, Ford vigorously denied the existence of any safety-related defect in the vehicles under investigation. Ford maintained then, and continues to maintain, that the reported incidents were attributable to drivers' failure to follow proper parking procedures rather than to any mechanical defect, and that the intense publicity surrounding the NHTSA investigation had created a false impression that such incidents occurred only in Ford vehicles.

No final determination of defect was ever made. After the initial determination and the subsequent public hearing, Secretary Goldschmidt decided to negotiate a settlement with

Ford that recognized the "human factors" involved in these transmission accidents. The settlement agreement, signed December 30, 1980, provided first that Ford send warning letters, equivalent to the notification prescribed for statutory recall campaigns under the Safety Act, to all owners of covered vehicles. These letters informed recipients of the agency's initial defect determination of June 1980 and reminded them of the proper procedures to follow when parking their cars--namely, to set the gear selector firmly in "park", turn off the engine and set the parking brake.

In addition, Ford agreed to send warning labels to those vehicle owners as continuing reminders to drivers to take the reasonable steps all drivers should take to secure their vehicles from unintended movement when parked. In return, the Department of Transportation agreed to close the case and not seek additional remedies against Ford in the absence of new information concerning the matter. Ford has estimated that 21 million letters and warning labels, about 88% of the total mailed, were in fact delivered to their intended recipients.

When the Center for Auto Safety and others challenged the validity of this settlement in 1981, the agency examined the data and reaffirmed its conclusion that the settlement was reasonable.

Both the United States District Court for the District of Columbia and the U.S. Court of Appeals for the District of Columbia Circuit affirmed the reasonableness of the settlement and upheld the Secretary's and NHTSA's authority to enter into this specific settlement. In ruling that the Secretary had not acted arbitrarily or abused his discretion in reaching the settlement, the U.S. Court of Appeals found that "the existence of a defect was not conclusively established" and that "[t]he Department would have faced great difficulties in sustaining its burden to prove the existence of a defect, because the interaction between the driver and vehicle seemed a critical factor in the transmission malfunctions." (Center for Auto Safety v. Lewis, 685 F. 2d 656, 663 (1982)).

In addition, Mr. Ralph Nader petitioned the agency in 1981 to reopen the investigation, which was denied in October of 1981; and the Center for Auto Safety requested reconsideration of this decision, which was denied in June 1982. The agency denied these earlier petitions because of a lack of any new evidence suggesting the presence of a safety-related defect. The available evidence indicated that there had been a noticeable decline in the rate of reported incidents, accidents and fatalities following Ford's notification and warning label campaign.

The March 6, 1985, petition of the Center for Auto Safety and others, coming four years after Ford's 1981 campaign, offered the advantage of a somewhat greater perspective due to the passage of time. However, it did not provide evidence contradicting the agency's earlier assessments or suggest that the issues presented by the case are now any less difficult to resolve. The only information NHTSA has obtained or learned about since the settlement agreement consists of reports of accidents or incidents of both Ford and non-Ford vehicles which were previously unknown to the agency. This information does not support the allegation that "inadvertent movement" incidents are limited to 1966-79 Fords, or that such incidents were due to a vehicle defect.

In responding to the March 6 petition, the agency staff conducted an exhaustive analysis of available data which went far beyond a review and analysis of the evidence presented in support of the petition. We requested Ford to provide substantial new submissions, including updated incident and accident data. Ford provided this new data and also much beyond that requested. In addition, we requested and received from General Motors, Chrysler, and American Motors information concerning their customers' experiences with so-called "park-to-reverse" incidents in their vehicles as well as any design changes which they might have undertaken since 1980. We reviewed and analyzed all of this information and other data sources to assist us, including NHTSA's Fatal Accident Reporting System (FARS) which affords an indication of accident rates free of bias due to publicity.

This review and analysis convinced me that "park-to-reverse" incidents occur among vehicles made by all major manufacturers. While reported incident rates for Ford vehicles have been higher than those for other manufacturers, this observation does not go beyond the initial determination of June 1980, which was vigorously disputed by Ford and which was settled by the Department in December 1980.

The March 6 petition urged us to consider Ford's 1980 design changes to automatic transmissions as a ground for further investigation. While the design changes were apparently intended to improve the function of the park apply systems in Ford vehicles, they do not, in and of themselves, constitute proof of a safety-related defect under the Safety Act. Moreover, when reported incident rates are normalized for vehicle population size, the 1980 changes have not resulted in substantial reductions of incidents, raising a question about their appropriateness as a recall remedy, even if we were to find a defect in these vehicles.

Our overall review of the data suggests that the 1980 changes have not significantly influenced the rate of reported incidents. It therefore does not appear from the data we have that a recall campaign, in which a mechanical alteration of the vehicles' transmissions would be attempted, promises any greater reduction of "park-to-reverse" incidents than has already been accomplished by Ford's 1981 notification and warning label campaign pursuant to the settlement agreement.

No evidence presented since the date of the initial determination convinces me that a final defect determination is currently warranted or even likely if further investigation is undertaken.

The evidence also continues to support the inference that drivers who misposition their gear shift levers and who fail to take precautions such as turning off their engines and setting their parking brakes have contributed to "park-to-reverse" incidents. I must also note that the effect of the publicity associated with this matter continues to make judgments concerning the differences in reported incident rates extremely difficult.

The overall trends in the data of reported incidents and accidents has continued downward since the date of the settlement. It is also noteworthy that the degree of difference between the rates of reported Ford incidents and reports of other manufacturers is smaller than it appeared in 1980.

I want to emphasize -- in the strongest terms possible -- that the agency will intensify its campaign to heighten the public's awareness of the importance of careful driving practices in preventing incidents of inadvertent vehicle movement. I believe that heightened publicity and information designed to increase public awareness of this problem can have a positive effect.

Given the new information that "inadvertent movement" incidents are common to all cars, we need to broaden as well as intensify our campaign. Therefore, I have directed our staff to identify new ways to focus public attention on this problem. These include appropriate materials for driver education programs and other general educational materials, including press releases and background information for the news media. In addition, persons who contact the agency in writing or by calling our Auto Safety Hotline are advised of NHTSA's investigation and of the warning letters to owners that vehicles not properly set in "park" might slip into reverse without warning, and of the warning labels to remind drivers of the hazard of failing to secure their vehicles in park, apply their parking brakes and shut off their engines before leaving their vehicles.

This concludes my prepared statement. We would be pleased to try to answer any questions you may have.

Mr. **Wirth**. Thank you, Ms. Steed.

Let me, if I might, take you back to our July 27, 1983, hearing. At that hearing, you stated that 26 people had been killed since the settlement; is that correct?

Ms. **Steed**. Yes, I believe it was.

Mr. **Wirth**. You also provided the subcommittee with a graph showing what you called, at that time, a dramatic decline in fatalities, and we have reproduced the graph over there. That's the center chart. Is that your chart?

Ms. **Steed**. Without looking at it in great detail, it appears to be the same.

[The following information was submitted for the record:]

Upon closer review, however, it is not the same. Our July 27, 1983, chart showed only the fatalities as of that date. This chart projects the fatality trend beyond that date. We did not make such a projection.

Mr. **Wirth**. Now if you would also look over there, I would like you to take a look at the chart prepared by your staff in its July 3, 1985, report. That's the chart on the right. We have reproduced that one over there.

Can you tell us approximately how many fatalities that chart shows as of mid-1983?

Ms. **Steed**. Probably about 306. That's the total number we are aware of at that time.

Mr. **Wirth**. And for that period of time, you had told us on July 27, 26 people. Your own chart over there shows somewhere between 50 and 60 fatalities, about twice the amount.

Ms. **Steed**. Yes.

Mr. **Wirth**. So you would agree that the fatalities were more than double what you told us in July 1983 that they were; is that right?

Ms. **Steed**. The statement in July 1983 that we knew of 26 postsettlement fatalities was correct as of that time. We have since learned of or verified, additional fatalities, Mr. Chairman.

Mr. **Wirth**. You also stated at that hearing that the average rate of fatalities reported was 300-percent higher before the completion of the Warning Label Program. The GAO chart is the one on the left there.

Does that show a 300-percent decrease since the settlement in 1980?

Ms. **Steed**. The 300 percent was a per-day rate, I believe, and it was correct at the time—fatalities per day.

Mr. **Wirth**. Well, how could it be correct at the time, if the GAO report and your own data shows hardly a shift of 300 percent? I don't see where the 300-percent number shows up on any of the data that's available by you in the right-hand chart or by the GAO in the left-hand chart.

Mr. **Parker**. Mr. Chairman, the difference is due to difference in the type of analysis. The presentation by GAO is by year, fatalities by year, the fatality rate. If you take all of the fatalities that occurred before settlement and calculate a death-per-day rate and compare that to a rate of death-per-day postsettlement, the current number would be 194 percent greater prior to settlement.

Mr. **Wirth**. So the numbers have gone from 97, which you knew about in 1980, and it's gone up dramatically since then; is that right?

Mr. **Parker**. In 1980, we counted 97. Since that time, with our recount procedures and learning about additional fatalities that occurred presettlement, the number is no longer 97. It's a different number.

Mr. **Wirth**. What is that number now?

Mr. **Parker**. I'll have to refer to my notes; 127, if you include 1966 to 1979; 108 if you include 1970 to 1979 only.

Mr. **Wirth**. So the number of fatalities known to NHTSA has more than doubled since the agency initially determined that there was a defect; is that correct?

Mr. **Parker**. Pardon me. Would you repeat that please?

Mr. **Wirth**. The number of fatalities known to NHTSA has more than doubled since the agency initially determined that there was a defect?

Mr. **Parker**. That's correct, but that includes fatalities that happened before settlement, not just those that happened after settlement.

Mr. **Wirth**. And that number, then, does not correspond to a 300-percent decline in the rate of fatalities reported, does it?

Mr. **Parker**. It's a different analysis, Mr. Chairman. The analysis that was referred to in the July 1983 testimony, was a calculation based on deaths-per-day. If you do that same analysis today, the difference is 194 percent, not 300 percent, so there has been a reduction in the death-per-day rate of not 300 percent, as we reported then, but 194 percent.

Mr. **Wirth**. And that data shows up on your chart over there, on the right-hand side chart that NHTSA—we've reproduced, the NHTSA chart, and the GAO chart shows that kind of a decline, does it?

Mr. **Parker**. It would not show that kind of a decline, because it's a different analysis.

Mr. **Wirth**. Now I'm getting a very clear sense of how to lie with statistics. What we're getting here is, you know, now you see it; now you don't.

Let me try again, Ms. Steed, with you. In October 1983, you wrote to me that, "The number of reported fatalities is falling at a faster rate than the number of vehicles on the road," and yet the chart again, prepared by your own Office of Defects, in July of this year, contradicts that statement. Specifically, that chart shows that the rate of fatalities seems to remain constant and even increases a bit. It has not gone down, isn't that correct? Isn't that what that chart shows?

Ms. **Steed**. Mr. Chairman, when I wrote to you, the statement that I made at that time was correct. Since that time, we have learned of additional fatalities. We have included those in our analysis formula, and you see the results on the third chart on the wall.

Mr. **Wirth**. So in other words, since 1983 when you testified here, you have found that there has been a significant increase in fatalities; is that right?

Ms. **Steed**. No, I would not say a significant increase in fatalities. If you want to look at exact numbers, in 1980 there were 46 fatalities. That fell dramatically in 1981 to 27 fatalities. The following year, it was 1 less, 26 fatalities. The next year, it was 4 less, 22 fatalities. In 1984, we are aware of 25 fatalities.

Mr. **Bryant**. If the gentleman would yield, I'd just like to know if the Administrator takes pride in that? Are you proclaiming that to the committee as some kind of an achievement?

Ms. **Steed**. I'm saying that the chairman was asking whether I would say fatalities have dramatically increased, and I'm saying that the rate over time has not dramatically increased. We saw a dramatic reduction as a result of the 1980 settlement, and that rate of increase has not increased.

Mr. **Bryant**. And the fact, according to your information, it's been 26, 25, 24 human beings being killed each successive year somehow is a defense of the conduct of your agency?

Ms. **Steed**. No, I didn't say that, Mr. Bryant.

Mr. **Bryant**. Well, then, what is it?

Ms. **Steed**. I'm simply giving you the numbers of fatalities that the agency knows about.

Mr. **Wirth**. The basic problem that we face is the determination of this agency to enforce its mandate and the law, which says that it is supposed to be concerned about traffic safety. We have an initial problem that I think everybody agrees existed, and there was the settlement in 1980 at which time a sticker went out that says, "Important Safety Precaution," that's the sticker that was sent out.

Ms. **Steed**. That's correct.

Mr. **Wirth**. The sticker says nowhere on it, right, that there was a park-to-reverse problem. I happen to own one of these automobiles. That sticker is on the dashboard of the automobile. And, you know, when I received this, I had no idea what this was all about. It doesn't say anywhere that there was a problem. But that settlement occurred, and that was not a settlement that occurred under your jurisdiction; it occurred in the previous administration.

But when we then came back and said, "Did the settlement do any good," you came back and told us that, yes, there had been, because of the settlement, you told us in 1983, a very sharp decrease in the number of fatalities.

Now the GAO has come back and told us that, in fact, there has not been that kind of a decrease in fatalities, and your own data shows that. You have been reluctant to continue to use a similar kind of data, but rather have gone to the Ford Motor Co. and asked them for the data on the very issue that you are supposed to be policing. This is quite an extraordinary thing to do it seems to me, to change the data in midstream.

The concern here is not what Ford Motor Co.'s transmission may or may not have been doing. That's a subject we have been through over and over and over again. The concern is that in informing the public and informing this committee, you have, from everything that we have garnered from the data, not been forthcoming, not been straight with this committee about what, in fact, happened, what the history of fatalities has been. You have also not been straight with the people of this country in terms of enforcing the law and letting them know that there are some very, very significant problems out there.

Now as we have discussed before, I don't understand why you all don't have a commitment to highway safety, which is the job of your agency. I don't understand why you don't do that, why you don't let the American public know what's going on, but rather continue to obfuscate the situation, as we heard with this alleged statistical analysis that's going on here. While you have been obfuscating with statistics, an awful lot of people have been killed as a result of this particular problem.

Mr. Rinaldo.

Mr. RINALDO. Thank you, Mr. Chairman.

Ms. Steed, I have a copy of a letter in front of me, dated July 1, 1985, in which you respond to Clarence Ditlow of the Center for Auto Safety, and it's in response to the March 6, 1985, petition of the Center for Auto Safety and others to initiate an expedited defect investigation into the matter that we are now discussing.

In the first paragraph, you say:

> I have decided to deny the petition because there are not sufficient reasons to expect further investigation of this matter to result in a determination that the vehicles in question contain the alleged defect.

Could you explain that sentence and why you took that action and made that statement?

Ms. STEED. Based on all of our analyses—and let me assure the committee that we undertook extensive analyses as a part of considering the center's petition—we found no new mechanical information or data on a mechanical defect that would support the finding of a recall. We did not find the existence of a mechanical defect.

When you look, for example, at the changes that were made by Ford Motor Co. in 1980 in their transmissions, it was the center's contention that those changes would dramatically affect the performance of those cars after the fix had been made. As we look at the data, that assertion was simply not true. The cars perform about the same. So even if we had asked for a recall at the time, and Ford Motor Co. had undertaken the mechanical changes, which they did in 1980, we don't see a difference in the way their cars perform. So we don't see that a mechanical fix would solve this problem, and we continue to believe that human factors are a great part of this problem, that people simply do not follow proper parking procedures and they exit their vehicles while the engine is still running. They have not set the parking brake, and they've not made sure that those vehicles are in park.

If they would do that, we believe that the fatality rate and fatalities would be substantially reduced.

Mr. RINALDO. When you say based on your analysis, could you tell me how that analysis took place and what methodology was used? What kind of an analysis, and what kind of data were studied?

Ms. STEED. We'd be happy to. Let me just briefly touch on the types of data, and then I would ask Mr. Parker, who oversaw that methodology, to take over for me, if I could.

We looked at the data that we had on park-to-reverse incidents, accidents, and fatalities. We asked the Ford Motor Co. for similar data concerning their cars. We asked other manufacturers about the performance of their cars. We analyzed our own hot line data, which is consumer-reported data. To try to sort out the publicity effect, we looked at our own fatal accident reporting system. And looking at all of those things, going through and looking at all of the fatalities, that's the basis for our finding.

George, would you like to amplify the methodology?

Mr. **Rinaldo**. Well, let me ask you, before you go beyond that, I have two other questions:

No. 1, how long did it take to perform that analysis, and did you do any mechanical tests or any tests of the vehicles themselves? Was there any actual testing done during that period of time to determine whether or not that defect was correctable and a recall, whether or not a recall should have been initiated?

Ms. **Steed**. We did no more testing from the time the center presented its petition until the announcement of our findings. We did some testing earlier, I believe. The agency did actual mechanical testing of transmissions.

Mr. **Parker**. I don't know if I can add to the description of the analysis itself. I would clarify our methodology, though. GAO suggested that we changed our methodology of counting fatalities, but that's not the case. We went from a single-person review of the fatality information to a panel of three people. But the criteria that were used to judge the accidents, the fatalities, was essentially the same.

I think when we went through that recount, there were some changes of "yesses" to "possibles" and "possibles" to "noes" and vice-versa, but when we were all done, it was essentially a wash.

Testing was done by the agency during the conduct of the defect investigation itself from 1977 through early 1980, and there was no reason to relook at all that. There was no reason to suggest that there had been any change in the pre-1970—pre-1980 vehicles and the post-1980 vehicles. We believe we understood the characteristics of the transmissions for both periods of vehicles.

Mr. **Rinaldo**. You still didn't answer, though. How long did it take to perform this analysis?

Mr. **Parker**. About 4 months.

Mr. **Rinaldo**. About 4 months.

Ms. Steed, your letter denying the petition states that, "Our overall review of the data suggests that the 1980 changes have not significantly influenced the rate of reported incidents." And you went on to say that: "A recall campaign would not promise any greater reduction in park-to-reverse incidents than was already accomplished from the Warning Label Program."

Then in a letter dated August 22, 1984, from you to Senator Paul Sarbanes, you stated, "In model year 1980, Ford modified its transmission designs to help ensure that drivers would place their transmissions in the full park position, essentially eliminating the possibility of their shifting into reverse."

Now it seems to me that there is some differences in the two statements, and how do you reconcile them? For example, on the one hand, you say that the problem is fixed. On the other, you seem to say that you don't think it is.

Ms. **Steed**. Well, as a result of the analysis we have just recently done, to which George alluded, we have the advantage of additional data that we did not have at the time. Looking at that data and comparing the performance of pre-1980 cars to post-1980 cars, we find that there is not a substantial difference.

Mr. **Rinaldo**. Was this analysis done after your letter to Sarbanes or before your letter to Sarbanes?

Ms. **Steed**. The letter to Senator Sarbanes was in 1984?

Mr. **Rinaldo**. It was August 22, 1984.

Ms. **Steed**. Yes, sir; this analysis was done between March and June 1985.

Mr. **Rinaldo**. Mr. Peach, from the GAO, said or seemed to imply that at least in any recommendations that they may give us, was that this was a unique type of settlement, and they would advise not to do this again.

In looking back, do you think the settlement was the right type of settlement to make, and what role did you have in failing to make a defect determination?

Ms. **Steed**. None at that time. That was all done before the Reagan administration took office.

Mr. **Rinaldo**. All right. Now do you think that the settlement was the right type of settlement? Do you think that any actions you've taken since you've come on board have been correct, or based on the additional data in this new analysis, do you think that some further actions are warranted?

Ms. **Steed**. We believe that our analysis that we have just undertaken is among the most comprehensive analyses the agency has ever done. We have looked at every possible bit of data, and our conclusion is that we simply cannot find a mechanical defect in these cars.

As far as what else could be done, we did uncover greater information to point to the fact that all cars may have this type of problem, that all cars could, if they are not properly parked, move from park to reverse. Therefore, I think it is incumbent on the agency to do a more intensified publicity campaign to warn people about this general highway safety problem.

Mr. **Rinaldo**. In your letter to Mr. Ditlow, you also say that: "My decision is based on the analysis contained in the staff report and on my judgment that no new engineering evidence has been developed, and that the additional data concerning incidents, accidents, and fatalities tends to support earlier decisions to adopt and abide by the terms of the settlement agreement of December 30, 1980."

Has that report that you are referring to there been submitted to the subcommittee?

Ms. **Steed**. The 1980 report? I would imagine.

Mr. **Rinaldo**. No, no.

Ms. **Steed**. I'm sorry.

Mr. **Rinaldo**. The staff report, the latest one.

Ms. **Steed**. The July 1985 report? Has it gone to the committee? Yes, it has been provided to the committee.

Mr. **Rinaldo**. Mr. Chairman, I don't think that the minority has received a copy of that report to date?

Would you please send us a copy of the report?

Ms. STEED. We'd be happy to.

Mr. RINALDO. OK.

Mr. Chairman, I have no further questions. Thank you.

Mr. WIRTH. Thank you.

Mr. Bryant.

Mr. BRYANT. Ms. Steed, your letter of July 12, 1985, that denies the petition of the Center for Auto Safety, states that your decision is "based on the analysis contained in the staff report." And you said, quoting you, "and on my judgment that no new engineering evidence has been developed."

On page 30 of the staff report, the first observation says, "ODI has discovered no new technical information bearing on the problem which would alter the agency's findings as stated in its June 1980 report."

Would you tell us please, what were the agency's June 1980 findings?

Ms. STEED. I'd like to ask George, if he could, to go back through the mechanical or the engineering findings of the 1980 report.

Mr. BRYANT. Well, maybe you could just give us your general answer, and if we need more specifics, we could turn to him.

What, in general, were the June 1980 findings?

Ms. STEED. In general, they were that the configuration of Ford transmissions could have a greater tendency, through spring forces, to move from park to reverse than other automobiles.

Mr. BRYANT. In other words, there was a defect relative to other automobiles; isn't that correct?

Ms. STEED. There was never a formal finding of defect, sir. There was a recommendation made to the Secretary of Transportation, and there was never a formal finding of defect made.

Mr. BRYANT. Well, the formal finding—would you repeat what you just said the finding was? That would suffice.

Ms. STEED. I said the conclusions of the staff report were that there was a tendency in Ford transmissions, because of certain spring forces and certain configurations of the transmission, that would cause those transmissions or enable them to slip from park to reverse.

Mr. BRYANT. Well, isn't that sufficient to cause you to wonder if all these people being killed out there are being killed because of that tendency?

Ms. STEED. Since that time, Mr. Bryant, we have looked at the performance of the design changes that the Ford Motor Co. made in 1980 to correct the problems found in the 1980 report.

Mr. BRYANT. Well, what about all the cars prior to that that existed, that were manufactured prior to that time? They still contain that defect, don't they?

Ms. STEED. There would be no design changes in those cars; that's correct.

Mr. BRYANT. No, there wouldn't be. They'd still contain the defect that the report you relied upon said existed in the Ford automobile, wouldn't they?

Ms. STEED. That report was a recommendation to the Secretary, and I repeat again, there was no formal finding of defect.

Mr. **Bryant**. But the report said that there was a tendency, due to the design of the transmission, that caused a tendency on the part of the Ford automobile to flip into reverse; isn't that correct?

Ms. **Steed**. That is correct. And in reviewing that information, the Secretary looked at other factors and apparently decided that there was no defect, that a settlement along the lines that you've heard this morning was the way to resolve that particular problem.

Mr. **Bryant**. Well, they decided that a settlement might be a way to resolve the problem, I think it's quite clear it's been a complete failure. The GAO just testified that it was. But nevertheless, the information in your file, that you said you relied upon to deny the petition to reopen the case, stated that the Ford automobile had a tendency to flip into reverse, did it not?

Ms. **Steed**. The initial findings of the staff report said that; yes, sir.

Mr. **Bryant**. Well, then, how can you say in your letter denying a reopening of the case that you had no information or nothing to change the initial determination, when the initial determination was that it had a tendency to flip into reverse.

Ms. **Steed**. But in this proceeding we cannot ignore what happened subsequent to that staff report. The Secretary of Transportation overturned that recommendation, and the Secretary entered into a formal settlement.

Mr. **Bryant**. Now he didn't make any change in the factual determination in that report, that it had a tendency to flip into reverse, did he? He just went on and moved to a settlement of the problem short of a recall; isn't that correct?

Ms. **Steed**. I believe that's correct. I don't know what motivated him.

Mr. **Bryant**. But the factual determination in the report still stands today, unaltered; isn't that correct?

Mr. **Miller**. Congressman Bryant, there never was a final determination made.

Mr. **Bryant**. I'm not referring to a final determination. I'm referring to the facts which she just recited to me that were in the report to the Administrator of NHTSA and to the Secretary of Transportation. Those facts still remain unchallenged, do they not?

Mr. **Miller**. Those were part of an initial determination, and there was no final action—there was no final determination made. The case was closed pursuant to settlement.

Mr. **Bryant**. Well, do you have any information to challenge those facts? Has that come up in the last 5 years? You've not told us of it.

Mr. **Miller**. As the Administrator stated in her letter to Mr. Ditlow, we have not received additional technical information during this recent review, beyond what was available to us in 1980.

Mr. **Bryant**. That's my point.

Ms. **Steed**. We searched for it, though, Mr. Bryant, and we asked other auto companies what their experience was and what their designs were. We met with a number of victims of the park-to-reverse incidents. They had brought a plaintiff's attorney along, who said that he had additional information. We immediately asked him to come before the agency, to share that information with us, so that we could take advantage of that. He had no new information that we could use.

Mr. BRYANT. Well, I think you're combining apples and oranges here. I'm not asking about additional information that would make it even worse. We could debate that in a few minutes. I'm not talking about whether or not you've got additional information. At this moment, I'm not discussing whether you have additional information to give us even a greater reason to conclude that there is a defect. I'm just talking about the 1980 report.

The fact is that you relied upon the 1980 determination that stated, just as you stated a few moments ago, that Ford had a tendency to flip into reverse. And you have no information that you have collected in the last 5 years that would in any way negate that statement, do you?

Ms. STEED. That's correct, I believe.

Mr. PARKER. If you look at the conclusions in the original 1980 staff report, all those conclusions state that if the gear selector happens to land—for example, this is one quote—"only midway between park and reverse," or "Thus if the gear selector is not properly engaged outside forces such as engine vibrations, et cetera, can cause a shift from park to reverse."

And the differences identified between the Ford transmissions and other manufacturers' transmissions stand. We didn't look into, except what we could gather, any differences there. We didn't find any differences. In other words, we found nothing in our later analysis that would cause us to change the conclusion that the driver still has to make an error, so we stood by the Office of Defects Investigation's, conclusions that were in the 1980 report.

But the subsequent analysis looked at the rate of incidents, accidents, and injuries of pre-1980 vehicles, the post-1980 vehicles, in the post-1980 timeframe, and what we found was that the rate of incidents, accidents, and injuries was essentially the same. And that leads one to question the original conclusions in the staff report.

Mr. BRYANT. Yes. How many deaths were caused by Ford automobiles as a result of this, as opposed to deaths caused by the other types of automobiles?

Mr. PARKER. Well, the cleanest database we have there is our FARS database, and in the FARS database, I believe there are 70 Ford fatalities, 50 General Motors fatalities. I do not recall what the other two are.

Mr. BRYANT. What period of time are you talking about?

Mr. PARKER. That's any period of time. The FARS database goes back to about 1975 up through about 1983 or 1984.

Mr. BRYANT. Well, how many fatalities have occurred on 1981 and later model Ford vehicles?

Mr. PARKER. We know of about four.

Mr. BRYANT. About four?

Mr. PARKER. Yes.

Mr. BRYANT. How many occurred on all the vehicles in question here, prior to 1981 models?

Mr. PARKER. Prior to 1981? You mean——

Mr. BRYANT. The model years prior to 1981.

Mr. **Parker**. We count 106. But the difference there substantially is the number of vehicles on the road. You started, for example, in 1981 with one million and some vehicles, as opposed to something like 16 million pre-1980 vehicles.

Mr. **Bryant**. Well, let me debate the numbers with you in just a moment. I want to get back to what I was talking about, and then I do want to ask you questions about those numbers that we just discussed.

You were talking about the original report. I've got it in front of me, and it says, "However, the large differences in failure rates"—that is, between the various models and Ford—"are probably the result of the unique Ford characteristics outlined in this report." And at the bottom it says, "The designs of the other manufacturers are likely more tolerant of mechanical imperfections and human frailties because the internal mechanism with those transmissions tends to push themselves into park, rather than jump towards reverse."

And you found, as you testified a moment ago, I understand, no facts that would tend to change in any way the facts that were reported in this report in 1980; is that correct?

Mr. **Parker**. In terms of the design differences between the manufacturers' vehicles, we found nothing that would change that. The differences or the new information was with regard to incidents, accidents, injuries, and fatalities. And when you look at the design change in 1980 and compare that, the accident records for those vehicles to those pre-1980, you don't see a difference.

Mr. **Bryant**. I'll ask some more questions later, Mr. Chairman.

Mr. **Wirth**. Mr. Dingell.

Mr. **Dingell**. Thank you, Mr. Chairman.

Ma'am, I have here before me a memorandum dated October 3, 1980, from Joan Claybrook to the Secretary. Is that the memorandum we're discussing today?

Ms. **Steed**. We are talking about the report. I'm not sure about the date of the memorandum, Mr. Chairman.

Mr. **Dingell**. And the Secretary was Mr. Neil Goldschmidt?

Ms. **Steed**. Yes, sir.

Mr. **Dingell**. And in the report, she said, "I also believe that 1970–1979 Ford vehicles equipped with C-6 Jatco transmissions contain a defect that relates to motor vehicle safety. However, since the remedy for these vehicles may be simpler than for vehicles with FMX C-3 and C-4 transmissions, I believe we may be able to negotiate this matter with Ford, and therefore plan to initiate settlement negotiations prior to a final determination."

I guess what she was saying was that she was recommending negotiations in this matter, and negotiations followed?

Ms. **Steed**. I have not looked at that memorandum, Mr. Chairman, but it sounds like that.

Mr. **Dingell**. What I'm trying to figure out is, was the decision made—was this an action recommending recall or negotiations?

Ms. **Steed**. It sounds to me like it was negotiation. I would have to look again at the language.

Mr. **Dingell**. Well, we've been wandering around here in a swamp of data. Now first of all, what data was used in connection with the petition that was filed by the center to open an investigation?

Ms. STEED. We used several data.

Mr. DINGELL. No, not you, but in support of the petition? What data was used in support of that?

Ms. STEED. I believe it was numbers of fatalities.

Mr. DINGELL. Was it fatalities?

Ms. STEED. According to the Center for Auto Safety, yes.

Mr. DINGELL. Was it verifiable and verified?

Ms. STEED. Somewhat, yes. We went through each and every——

Mr. DINGELL. Somewhat?

Ms. STEED. We went through each and every fatality, their list of fatalities.

Mr. DINGELL. Now there's quite a difference between somewhat verifiable and verifiable.

Ms. STEED. It is verifiable. Their list of fatalities did not match our list of fatalities, and we went through an exhaustive search to make sure that we had all of the fatality data that we could possibly get.

Mr. DINGELL. All right. I hear your comment on this manner. It says:

> Brauner: Double count of the same failure. Brauner, who is still alive, is the mother of the victim, Robinson.
>
> Compo: Not a fatality, although CFAS reports death in 1976, a NHTSA contractor interviewed Mrs. Compo, who suffered multiple bumps, bruises, contusions and strains in the accident.
>
> Burley: Vehicle has a manual transmission.
>
> J. Plank: Death not attributable to transmission failure. Mrs. Plank was apparently struck down by a vehicle driven by her 77-year-old husband, who got out of the car after hitting his wife and was run over by the vehicle in an apparent park-to-reverse accident.

Then next is:

> P. Roches: Death not attributable to accident. Mr. Roches, a 77-year-old invalid, was a passenger in a vehicle driving by his wife, who was killed in an apparent park-to-reverse accident. Mr. Roches was not physically injured in the accident. He died some two months later from an unrelated intestinal problem.

What I'm trying to figure out is, were these verified or verifiable fatalities?

Ms. STEED. We went through to verify all of the reported fatalities that the center gave us. We found that 54 of the fatalities that the center was counting were not, in fact, due to park-to-reverse incidents.

Mr. DINGELL. Fifty-four were not?

Ms. STEED. Fifty-four were not.

Mr. DINGELL. Would you submit for the record those and how they were not verified or verifiable?

Ms. STEED. Yes, sir, we can.

Mr. DINGELL. That was 54 out of how many?

Ms. STEED. 296, I believe.

Mr. DINGELL. OK.

[Information to be furnished follows:]

ATTACHMENT III

Attachment III: The CFAS provided names of 296 "victims" of "Park to Reverse" incidents. This listing identifies 54 which ODI has placed in the "No" category based on review of available information. The listing also includes 14 names which originally appeared as "Yes" in NHTSA's June 1980 Phase I report and which ODI has now placed in the "No" category. These are marked with (I) notations under remarks.

	Name	Remarks
1.	Abatie, Ellen	Under hood attempting to start the car using a "tool," car powered forward pinning her against a vehicle in front.
2.	Anderson, Misty	Interference with gear shift selector.
3.	Balgiano, Jeremy	Interference with gear shift selector. (I)
4.	Blackmon, Bobbie	According to medical examiner, death was due to ". . . sudden heart stoppage as seen in spontaneous ventricular fibrillation. The injuries suffered in the car accident were not of a serious nature to have caused her demise."
5.	Bowie, Chester	Selector left in "drive" gear.
6.	Brawner	Double count of same failure.
7.	Bucknam, James	Vehicle left in "Neutral" gear. He dies of "heart attack" 2 months after accident.
8.	Burleigh, Jack	Vehicle has a manual transmission.
9.	Campo, Angela	Mrs. Campo suffered multiple bumps, bruises, contusions, and strains in the accident. Not a fatality.
10.	Chavez, Elsie	Vehicle left in "Neutral" gear.
11.	Crane, Fred	Interference with gear shift selector.
12.	Curiel, Aristeo	Starting the engine from outside the vehicle, it powered forward.
13.	Dallman, Robert	Interference with gear shift selector; powered forward.
14.	Deppe, Olive	Selector found in "Neutral" gear.
15.	Duppong, Vera	Not a subject Ford transmission. (I)

	Name	Remarks
16.	DiBenedetto, H.	Driver killed trying to extricate car from railroad tracks.
17.	Enriquez, Pablo	17-year old driver behind vehicle controls. (I)
18.	Gandy, James	Passenger set vehicle in motion. (I)
19.	Gilbert, Donald	Starting engine with screwdriver - it starts and powers rearward.
20.	Goodman, Arthur	Passenger set vehicle in motion.
21.	Henthorn, T.	Selector left in neutral while trying to extricate it from muddy roadway.
22.	Hoover, Terry	Starting engine from under hood, it starts and powers forward.
23.	Hutto, James	Selector left in "drive" gear. (I)
24.	Johns	Double count of same failure.
25.	Johnson, Douglas	Selector left in "drive" gear.
26.	Justice, James	Selector left in "reverse" gear.
27.	Knighton, Rick	Interference with gear shift selector. (I)
28.	Korthas, Martin	Selector left in "drive" gear.
29.	Kotaiik, James	Selector left in "neutral" gear. (I)
30.	Landerman, F.	Died 3 years after accident from heart problems.
31.	Logan, Lucien	Selector left in "drive" gear.
32.	Miller, Michael	Interference with gear shift selector.
33.	Minshull, K.	Selector left in "drive" gear.
34.	Morgan, Bernice	Selector found in "drive" gear.
35.	McCarthy, M.	Died of pneumonia about 1 year after accident.
36.	Otto, Duane	Deputy Sherrif, at scene of shooting, apparently left engine running and selector in "drive".
37.	Outs, Robert	Lost control on snow-covered dirt road.

	Name	Remarks
38.	Pacheco, Raul	Interference with gear shift selector. (I)
39.	Pederson, John	Interference with gear shift selector.
40.	Pettway, E.	Dies of cardio pulmonary failure caused by chronic bronchial anomaly.
41.	Planck, Josephine	Struck down by 77 year old husband who was apparently not capable of operating car safely.
42.	Roches, Paul	This 70 year old invalid was a passenger in the vehicle driven by his wife who was killed in an apparent "P-R" incident. Paul Roches was not physically injured in the accident but died some 2 months afterwards from an intestinal problem.
43.	Ross, Steven	Performing maintenance on vehicle, it powered forward.
44.	Sanchez, Amy	Selector found in "drive" position. Child entering vehicle released parking brake. (I)
45.	Scovell, C.	Driver at vehicle controls - vehicle raced backwards striking bystander.
46.	Sims, Darrell	Selector left in "neutral" gear. (I)
47.	Singleton, S.	Selector left near "drive" gear.
48.	Smart, John	Interference with gear shift selector; victim under vehicle. (I)
49.	Soper, Trevor	Interference with gear shift selector.
50.	Tracy, Ethel	Exited vehicle while it was still moving in reverse. (I)
51.	Hinde (writer)	Mr. Hinde reported a fatality occurring August 1980 but NHTSA could not confirm it.
52.	Unknown [Murray]	Interference with gear shift selector. (I)
53.	Wallitt, J.	Driver at controls - car moved rearward at high speed striking pedestrian. (I)
54.	Wood, William	Selector left in "drive" position.

BEST COPY AVAILABLE

Mr. **Dingell**. Now, Mr. Peach, you came up with some comment with regard to the data which I thought was very interesting, and since you're still in the room, perhaps, Mr. Chairman, I could direct this to you.

You indicated that there was a change of the verification or the methodology used by NHTSA for purposes of establishing fatalities and that sort of thing; is that correct?

Mr. **Peach**. That's correct, Mr. Chairman.

Mr. **Dingell**. Did it relate to the number of persons who reviewed the data, or did it actually relate to the mechanisms which were used for purposes of verifying?

Mr. **Peach**. Mr. Parker has a different perspective than I have.

Mr. **Dingell**. Well, what is your perspective?

Mr. **Peach**. My perspective would be that they changed their criteria they were using somewhat in 1980, and they——

Mr. **Dingell**. What criteria did they change, and how did they change it, sir.

Mr. **Peach**. I would refer back, so I can be specific——

Mr. **Dingell**. Could you come up to the table, Mr. Peach? It's unfair to you, I think, to keep you back there in the audience while you are addressing this question.

What I'm trying to figure out is, was it a change of criteria, or was it just a change in the number of people that they had to deal with the question of the veracity of the figures.

Mr. **Peach**. According to my information, when they did their initial defect investigation in June 1980, they excluded from the fatality statistics those which NHTSA's legal counsel felt they could not successfully defend as park-to-reverse related, and when the deaths occurred more than 30 days after the accident. Those were two specifics kinds of judgments they were applying.

Mr. **Dingell**. This was in 1980 that they——

Mr. **Peach**. This was in 1980.

Mr. **Dingell**. What date in 1980?

Mr. **Peach**. That would have been about June 1980, at the time of their initial defect determination.

Mr. **Dingell**. So that was Ms. Claybrook that did that?

Mr. **Peach**. That would have been during Ms. Claybrook's tenure.

Then when NHTSA testified before this subcommittee in July 1983, it excluded all reports which involved intoxicated drivers or possible mechanical problems in the vehicle.

Mr. **Dingell**. What does that mean?

Ms. **Steed**. If they had a report, a police report, coroner's report or there was otherwise indication that there was an inappropriate alcohol level in the driver's bloodstream, they would exclude that and not count it.

Mr. **Dingell**. What did that mean? That they considered that to be a case of driving while under the influence?

Mr. **Peach**. They would not consider that to be a park-to-reverse problem. I would make the assumption—and I'm trying to get inside their heads there—that they're saying since the person was intoxicated, it made it more likely to be driver error.

Then in 1985, after the March 1985 petition, according to what we got from NHTSA officials, we had a statement that they made an attempt to correct any biases that may have crept into their prior methodology. So they convened a panel of three NHTSA staff engineers and reassessed all of the fatalities and categorized it either yes, no, or possible, based on the best information they had in hand.

Mr. **Dingell**. What does that mean?

Mr. **Peach**. At least they would have the coroner's report, the police report, and in some cases the investigation conducted by a contractor for NHTSA, where NHTSA did not feel there was adequate information in the file to be able to categorize an accident. So it would be that type of information they had.

Mr. **Dingell**. Did you find any reason to quarrel with that judgment?

Mr. **Peach**. We did not quarrel with their judgment on any of those.

Mr. **Dingell**. Do you have any reason to feel that the figures or the data were skewed by these actions?

Mr. **Peach**. No; we did not try—I will admit that we did not try to reconstruct in great detail or bring in our own engineering or other people to do that, but we looked at the process that NHTSA followed at that time, the steps they went through, and we basically, in presenting our data and statistics, have used their data with their categorizations of yes, no, and possible.

Mr. **Dingell**. Do you have any reason to feel that their behavior in any way lacked propriety in connection with this matter?

Mr. **Peach**. In terms of going back through and reassessing these; no. I would have no reason to believe that.

Mr. **Dingell**. Do you have any reason to believe that the reassessment led us to an unfactual conclusion, or led NHTSA to an unfactual conclusion?

Mr. **Peach**. With respect to their categorization of the fatalities that were reported to them for both Ford and non-Ford vehicles in the 1970 to 1979 period, my answer would be no.

Mr. **Dingell**. No. Now I'm curious, Ms. Steed, you found that this park-to-reverse problem was one that was shared by all manufacturers; is that correct?

Ms. **Steed**. Yes, sir; that's correct.

Mr. **Dingell**. Did you find that this was a problem which was peculiar to U.S. manufacturers, or did it afflict foreign manufacturers as well?

Ms. **Steed**. It's my understanding that it also affected a few foreign manufacturers, but we looked primarily at the major American manufacturers.

Mr. **Dingell**. But you did find that it was a problem that affected the foreign manufacturers?

Ms. **Steed**. I believe that's true.

Yes, George?

Mr. **Parker**. We had a few.

Ms. **Steed**. We had a few.

Mr. **Dingell**. Mr. Chairman, you've been very gracious to me. Thank you.

I again reiterate that I would like to have some questions for the record at the appropriate time. [See p. 84.]

BEST COPY AVAILABLE

Mr. Peach, when did you indicate that you can complete this study? [See p. 278.]

Mr. **Peach**. I've indicated, Mr. Chairman, 1 or 2 months, but I would like the opportunity to, in effect, review the data, based on any further questions that may be raised by both yourself and Chairman Wirth's committee of the testimony today of the things that need to be looked at with respect to this case.

I do think—you know, I'm saying that based on where we were standing. I do think we'll need to review the data.

Mr. **Dingell**. I gather, then, that you are going to say that you view, then, the state of the report as being incomplete in the light of the information today?

Mr. **Peach**. It's evolving.

Mr. **Dingell**. It's evolving. Just because I like to engage in a little semantics from time to time, "evolving" means incomplete, does it not?

Mr. **Peach**. Yes. To be honest with you, Mr. Chairman, based on the context of the hearing, two areas that I think we will look into in more detail are exactly how the non-Ford fatality data has been treated, which I alluded to earlier, and we will also look in detail into the Ford fatality data for the vehicles produced since they made their transmission change and try to look at that very carefully also.

Mr. **Dingell**. Are you indicating to us that there is something wrong with that Ford data?

Mr. **Peach**. I don't have any basis to indicate that there's anything wrong with the Ford data. I can really only report, you know, that NHTSA obtained that Ford data base. They made use of it. I know it contains name information, type of event that occurred, date. There was no basic kind of information on which they could do further followup with it.

Mr. **Dingell**. Ms. Steed, you also used data other than the Ford data, did you not?

Ms. **Steed**. That's correct, Mr. Chairman, we did.

Mr. **Dingell**. The writing of the report has not yet been completed either, has it, Mr. Peach?

Mr. **Peach**. That's correct, Mr. Chairman.

Mr. **Dingell**. Has it been started yet?

Mr. **Peach**. We've done some preliminary drafting, but we're still in the early stages of that. We addressed ourselves during the last couple of weeks to preparing to respond to specific questions that were asked for the hearing today.

Mr. **Dingell**. I see. Then I gather that you have not arrived at your final judgments with regard to that report to the subcommittees, have you?

Mr. **Peach**. No. Our final judgments will be contained in the report, sir.

Mr. **Dingell**. And they are not available to the subcommittee today?

Mr. **Peach**. Not in terms of the final judgments. You know, for example, Mr. Rinaldo raised some questions about wanting specific recommendations, if we thought we could provide them in certain areas.

Mr. **Dingell**. Well, Mr. Chairman, I want to thank you for the chance to participate. I want to commend you for this hearing, and I will look forward to receiving the report for the record when it is complete and it is of use to us.

I think that the holding of this hearing has been useful, but perhaps had it been upon a completed GAO report and investigation, it would have been much more useful.

I thank you, Mr. Chairman.

Mr. **Wirth**. Thank you, Mr. Chairman.

Let me, if I might, Ms. Steed, go to the overall question of what you all plan to do about this, if anything.

When you testified before us 2 years ago, you told us, "We are also going to take a number of steps with regard to consumer information to get the word out to the public," and you have said effectively the same thing again to day.

What is this committee going to believe that you are going to do, given the fact that nothing was done following the 1983 testimony?

Two years ago, you knew that this problem existed. You were telling us that there was a dramatic decline in incidents because of the 1980 settlement. We have seen that that is not the case.

Maybe the best thing to do is to say, what did you do following the 1983 hearing in terms of information going out to the public?

Ms. **Steed**. We took a number of steps, Mr. Chairman, to get information out to the public. If I had to estimate the potential audience that we reached, it would have to be somewhere between 150 and 200 million people. I say that because we did several things.

One was an article in Modern Maturity magazine that goes to 17 million people. Another was a——

Mr. **Wirth**. Modern Maturity magazine?

Ms. **Steed**. Yes, sir. Then we went to the Consumer Federation of America and asked them to publish an article in their newsletter, which goes to about 1,000 consumer clubs across America. We've also prepared live-copy public radio spots to be played. They went to about 3,600 stations. Broadcast magazine tells us that they have as an audience about 90 percent of the radio listeners in this country.

Mr. **Wirth**. How many public service announcements got on the air?

Ms. **Steed**. I have no way of knowing that, Mr. Chairman.

We also went to the traffic safety educators and went with an article in their journal that went to about 20,000 driver education teachers. We did our own article that we sent to 4,000 weekly newspapers. We did a featurette that is under my own byline that went out to 3,000 weekly newspapers just recently on the park-to-reverse problem. We have done interviews on the subject, general news releases on driving tips, and so forth.

So I wouldn't agree with you that we've done nothing.

Mr. **Wirth**. And while all of that is occurring, the death rate has gone up, is that right, by your data?

Ms. **Steed**. In 1984, we saw the death rate go up; that's correct.

Mr. **Wirth**. And why would the death rate go up in 1984 if all of this kind of activity were effective?

Ms. **Steed**. You have to look at overall numbers, and that is why we also looked at accidents, incidents and so forth. The deaths in

1984 represented by that bar, which appears to be a rather substantial increase, was actually only three deaths, sir.

Mr. **Wirth**. Very clearly, in the data that's available and sent to us in 1985. I will close with this. You told us, Mr. Miller, that there have been only three or four deaths since the 1980 change by Ford in their technology, right? They made a technological fix in 1980, correct?

Mr. **Parker**. They made a change in the operation of their park system; that's correct.

Mr. **Wirth**. And we have had four fatalities since then?

Mr. **Parker**. That's correct.

Mr. **Wirth**. On post-1980 automobiles?

Mr. **Parker**. On a rate basis, that's about half the rate of the pre-1980s.

Mr. **Wirth**. And prior to that, how many fatalities were there?

Mr. **Parker**. For those pre-1980 vehicles in the later timeframe, I believe I said 106.

Mr. **Wirth**. And your report of July tell us, on page 19, that there were 207 as yes, 106 as no, and 99 as possible. That 207 and 99 comes out to 306.

Mr. **Parker**. I believe that's both presettlement and postsettlement incidents, not just postsettlement incidents.

Mr. **Wirth**. So clearly post the change in the transmission requirements, there are only four fatalities. Prior to that change, there were 306 fatalities that you can identify.

Mr. **Parker**. No, I don't——

Mr. **Wirth**. And you're saying that there was no problem?

Mr. **Parker**. I think you have to look at what happened after 1980, and for the pre-1980 vehicles, the number is 106, versus 4 for post-1980 vehicles.

But then you have to look at it on a rate basis, and also with a very small number of fatalities for the post-1980 vehicles, we felt we had to look at other measures.

Mr. **Wirth**. Ms. Steed, we again thank you for coming in front of the committee. Clearly, on this issue, we remain deeply concerned about the commitment of the National Highway Traffic Safety Administration and the Department of Transportation to highway safety, and we hope that the efforts that we've all embarked upon this morning will help to increase your concern and vigilance.

Thank you for coming.

[Whereupon, at 1:11 p.m., the hearing was adjourned.]

[The following materials were submitted for the record:]

NINETY-NINTH CONGRESS

JOHN D. DINGELL, MICHIGAN, CHAIRMAN

RON WYDEN, OREGON
DENNIS E. ECKART, OHIO
JIM SLATTERY, KANSAS
GERRY SIKORSKI, MINNESOTA
JAMES H. SCHEUER, NEW YORK
JAMES J. FLORIO, NEW JERSEY
THOMAS A. LUKEN, OHIO
JOHN BRYANT, TEXAS
HENRY A. WAXMAN, CALIFORNIA
RICHARD C. SHELBY, ALABAMA

JAMES T. BROYHILL, NORTH CAROLINA
BOB WHITTAKER, KANSAS
THOMAS J. BLILEY, JR., VIRGINIA
MICHAEL G. OXLEY, OHIO
MICHAEL BILIRAKIS, FLORIDA
DAN SCHAEFER, COLORADO
FRED J. ECKERT, NEW YORK

MICHAEL F. BARRETT, JR.
CHIEF COUNSEL/STAFF DIRECTOR

U.S. House of Representatives
Subcommittee on Oversight and Investigations
of the
Committee on Energy and Commerce
Washington, DC 20515

ROOM 2323
RAYBURN HOUSE OFFICE BUILDING
PHONE (202) 225-4441

September 9, 1985

Honorable Charles A. Bowsher
Comptroller General
General Accounting Office
441 G Street, N. W.
Washington, D. C.   20548

Dear Mr. Bowsher:

Thank you for your July 30, 1985 reply to my July 25 letter concerning the investigation requested by this Subcommittee on February 6, 1985 regarding the actions of the National Highway Traffic Safety Administration (NHTSA) since settlement of the Ford transmission investigation in 1980.

I appreciate your advising me that our Subcommittee's request for an investigation and that of Chairman Wirth "were received" by the General Accounting Office (GAO) "at approximately the same time." I was, however, surprised to learn from your letter that you plan to issue two separate reports. I and my staff did not understand that to be your objective, although we may have misunderstood earlier staff discussions. I have no objection to a single report or to two, so long as (in the case of two) they are issued simultaneously since you have combined the requests into one investigation, as seems appropriate from the standpoint of efficiency and economy.

Since you wrote on July 30, Chairman Wirth's Subcommittee held its hearing on this matter and the GAO witness, Mr. J. Dexter Peach, who is well-known to this Subcommittee and highly regarded, testified as to GAO's preliminary findings. He noted that the GAO investigation was "not completed." When I asked him when it would be completed, he said it would be about one to two months. I expressed surprise, saying that it is "going to be completed with rather extraordinary speed even for your agency" and noted that we are "always interested in accuracy," as well as timeliness. At that time, I assumed the report would be signed by you. Now I understand that Mr. Peach may plan to sign it and thus it will not go through the normal (and often lengthy) review process for reports signed by the Comptroller General. (As you know, I have previously been concerned that such reviews often took too long and reports were not always timely. I note that more recently, the GAO has been sensitive to that concern which I applaud.) I gather that your staff believes this can be done because Mr. Peach does not intend any conclusions in the report.

I question this approach because of the importance of this matter and its controversial nature. Further, I note that Congressman Rinaldo urged that you reach conclusions, as well as even recommendations. Clearly, I normally favor GAO doing that if GAO believes the full and complete investigation warrants it. I do not know if it does in this case, but I observe that Mr. Peach, in reply to several questions at the hearing, came quite close to reaching conclusions, some of which I have concerns about because the investigation is incomplete. I urge you to reconsider this issue of reporting, whether or not conclusions and recommendations are included in the final report.

At the hearing, I indicated that I would have some additional questions as a supplement to the Subcommittee's request and for the record. They are as follows:

1. (a) What was NHTSA's specific commitment to the court to monitor the 1980 settlement between Ford and DOT? Did the settlement agreement or the court spell out any monitoring requirements?

(b) What was NHTSA's specific monitoring commitment to Chairman Wirth's Subcommittee? Was that commitment changed later by NHTSA? If so, how?

(c) How do these "commitments" differ?

(d) The GAO witness appears to be critical of NHTSA's monitoring efforts, noting that NHTSA (corresponded with Ford "13 times" since May 1981, but most of this correspondence "was prompted by outside sources"). Three letters were noted by GAO as "initiated by NHTSA." The GAO criticism concerns me, because I believe NHTSA must comply with such commitments. But is is not clear to me (after reading the GAO prepared statement) what GAO believes NHTSA should have done to meet each commitment. Please indicate when each letter was sent to Ford and explain what the agency failed to do to meet each so-called "commitment." Also, please explain what you believe the purpose of these so-called "commitments" and how they differed from NHTSA's obligations under the law. Did the settlement impose new duties on NHTSA that are not already required by law?

2. The GAO statement notes that, in 1977, NHTSA opened an investigation because of reports of "Ford vehicles which failed to hold or engage in park resulting in the unexpected movement of the vehicle." Thereafter, GAO refers to the matter as the "park-to-reverse" case or fatalities.

(a) Does this same explanation apply to non-Ford vehicles, as well as Ford vehicles?

(b) Does this explanation assume that in all cases the engine is running and the break is off (or is not working effectively) and the vehicle is unattended by a licensed driver?

(c) Does it assume that in all vehicles (Ford and non-Ford) the failure to engage or hold in park resulted in the shift landing only in "reverse" or is it possible for it to also slide over to "neutral" or "drive"?

(d) Does it assume, in all cases, that there is no human involvement?

(e) What effect does the failure to hold or engage in park have on the movement of the vehicle (Ford and non-Ford) depending on the incline of the road surface? For example, in such cases, is it possible that rather than go backwards, the vehicle (even if in reverse and with or without the engine on) might go forward and injure or kill someone? Has that occurred? How often? Is that situation covered by this case? If not, why not?

3. In the GAO statement (pp. 7-8), GAO notes that prior to settlement, NHTSA developed "an extensive data base" of over "23,000 reports, involving more than 12,000 vehicles, received from Ford and from consumers." The GAO also states that after the settlement, NHTSA developed a new data base which "contains about 1,700 entries." The GAO then states:

> While we have not completed a detailed examination of these entries, we have ascertained that they consist of unverified incident and accident reports.

(a) What were the sources of the 1,700 entries and the 23,000 reports? Was Ford one of the sources?

(b) What do you mean by the term "report," in regard to the pre-settlement data? What do you mean by the term "entries" in regard to post settlement data?

(c) Why was there more reports than vehicles involved in case of pre-settlement?

(d) Please explain to what extent all the "reports" prior to settlement were verified. If they too were "unverified," what is the significance of GAO stressing that the 1,700 "entries" were "unverified."

(e) The July 3, 1985 "ODI Staff Report" states (p. 7) that Ford "criticized" the NHTSA pre-settlement database "as flawed in concept and misleading because the number of actual complaint vehicles represented only about one-half of the 23,000 incidents, since complainants frequently reported multiple failures." The ODI staff report does not refute or disagree with that criticism.

Presumably, ODI accepted it as valid. Is there any reason for GAO to disagree with that criticism or to be critical of the ODI staff for not refuting or disagreeing with Ford?

The issue came up at the hearing (p. 50 of transcript) as follows:

> Mr. PEACH. I think it is fair to note that NHTSA never went through to try to clean up that 23,000 data base and determine the extent to which there was double counting, overcounting or other things like that. That was an issue that was never resolved because, as I understand it, NHTSA did not try to review and clean up the data base to take care of that.
>
> Mr. BRYANT. But that is just another way of saying they never did use their data base, isn't it? If you use the data base, you review, you clean up, you take out what is valuable and leave behind what is not valuable; and they did not do that, did they?
>
> Mr. PEACH. That's right. I will give you one example--
>
> Mr. BRYANT. I just want to get to the point. They didn't do that, did they?
>
> Mr. PEACH. No
>
> Mr. BRYANT. In sum, they didn't use their data base, did they?
>
> Mr. PEACH. No

I do not understand the GAO's apparent criticism in this reply of the ODI for not using the "23,000 data base." To what extent does ODI "review," "clean up," and "take out what is valuable" any data base for purposes of deciding whether or not to open a defect investigation? I observe that, in its November 9, 1984 report to this Subcommittee on defect procedures (B-213545), the GAO said ODI depends on receipt of information "from several sources," including individual consumers, hotline calls, Members of Congress, and others. "Using this information, ODI decides to initiate an inquiry or engineering analysis based on its professional judgment." Did ODI do anything different in regard to this case?

(f) Mr. Peach, in his later colloquy with Congressman Bryant (Transcript, pp. 53-55), agrees that the Ford data used by the ODI staff was unverified and unverifiable. What is the significance or importance of that GAO conclusion? Was the Ford data any more verifiable without work than the NHTSA data of 23,000? Did Ford suggest its data base was verified or more verifiable?

4. The July 12, 1985 NHTSA letter to the Center for Auto Safety states:

> The present petition, coming four years after Ford's 1981 campaign, offers the advantage of somewhat greater perspective due to the passage of time but it has not provided evidence contradicting the agency's earlier assessments or suggesting that the issues presented by case C8-02 are now any less difficult to resolve. The agency staff has not limited its review and analysis to evidence presented in support of the petition. We requested Ford to provide very substantial new submissions, including updated incident and accident data, which Ford did provide to us. Ford's counsel also provided much information beyond that requested. In addition we requested General Motors Corporation, Chrysler Corporation and American Motors Corporation to provide information concerning their customers' experiences with so-called "park to reverse" incidents in their products as well as any design changes which they might have undertaken since 1980, which they submitted to us. We have reviewed and analyzed all of this information, and other sources of data which might assist us, including NHTSA's Fatal Accident Reporting System which affords an indication of accident rates free of bias due to publicity. (Underlining supplied.)

This statement implies, at least, that the ODI and the NHTSA Administrator did not rely solely on Ford data, but also used other data, including the Center's data. Has GAO ascertained whether or not this is true? If it is, than why does the GAO leave the impression, at least, that somehow ODI and the Administrator relied on Ford data to the apparent exclusion of other available data? Indeed, Mr. Peach, in reply to questions (Transcript, p. 52) answered negatively when asked if he could find "justification" for NHTSA relying on the manufacturer's data. If NHTSA did, was that improper or inappropriate under the law? What data must NHTSA and ODI use under the law to decide whether or not to open a defect investigation? Did NHTSA comply with the law in this regard? Does the law require verification of such data?

5. The ODI report states that the "CFAS petition emphasizes fatality data as grounds for the need for a recall, and much of the congressional (including GAO) oversight of this matter has focused on fatality data." I understand from the Center's documents and NHTSA's July 12 letter that the petition was to "initiate an expedited defect investigation," not a recall, although a recall might follow.

(a) Taking into consideration your November 1984 report to this Subcommittee, is it normal for ODI and NHTSA to rely on fatality data in deciding whether or not to initiate a defect investigation? In GAO's analysis of other NHTSA defect investigations, has GAO found any where the data used covered only fatality reports? Was there less weight given by NHTSA to nonfatal incidents and accidents in those analyses? Did NHTSA require that such nonfatal data be verified before NHTSA would consider the data in other investigations? How does NHTSA weigh fatality rate data in all investigations, including this case? Why then does GAO emphasize fatality data in this or any case? Do you understand, based on NHTSA practice, that fatality and fatality rate trends should outweigh NHTSA injury, accident, and incident rate trends (particularly when such trends appear to differ) when NHTSA analyzes a potential defect for investigation?

(b) The GAO prepared statement states that in "contrast" to incident and accident reports, "fatality reports tend to have considerable documentation and independent verification." The word "tend" implies some uncertainty about the verification of such data. Was all such data verified in this case? What does "verification" mean in this case in regard to fatalities and non-fatalities? Does it mean the fatality was a so-called Ford or non-Ford park-to-reverse case? Please explain.

(c) The GAO prepared statement indicates that NHTSA "varied its methodologies for evaluating these cases." Please explain the old methodology. Please explain why and when NHTSA changed the methodology. Please explain the new methodology. Did this change affect the NHTSA fatality criteria? Was the change merely a change in the number and expertise of the people reviewing the data? Is this so-called "new methodology" sound and an improvement over the old? Will this methodology be used for all defect cases, or was it developed just for this case?

(d) The GAO statement provides that "NHTSA has never established specific criteria for judging park-to-reverse fatality reports?" What is the significance of the lack of criteria at this stage? Should that have been done prior to settlement, if needed? What criteria would GAO expect NHTSA to develop? Does NHTSA have such criteria for other defect investigations?

(e) The GAO witness states (Transcript, p. 30) that the change in methodology "was somewhat in response" to the March 6, 1985 petition of the Center. Were there other reasons for the change?

(f) In discussing Ford fatalities in the GAO prepared statement (p. 11), the GAO states:

> Statistics on the fatality rate for the period 1970-79 model year Ford vehicles show an overall increase for the period 1971-84, a decline in 1981, the first year after the warning letters and labels were issued, and an increase since that time.

On the other hand, the ODI report (p. 30) states that the "number of reported Ford fatalities declined every year until calendar year 1984, when it increased slightly, thereby driving up the rate of reported fatalities as well. The complete count for 1985 is not yet available. Given the relatively small number of fatalities in any given year, statistically valid projections for future fatality trends would be difficult." There appears to be some difference between the GAO statement (and its attached graph) and the ODI report. Please explain that difference and explain where and why GAO has a difference with the ODI. Does GAO disagree with the ODI?

(g) Which types of fatal accidents have been classified as "yes," "no," or "possible"? What are the criteria used by NHTSA in its categorization of fatal accidents? What type of accidents were excluded? Does GAO agree that these NHTSA criteria are reasonable and sound? Were these criteria always used by NHTSA, even before 1980? Were they used for Ford and non-Ford vehicles? If not, please explain why not. Was the NHTSA review of fatalities thorough?

6. The NHTSA Administrator, in her August 1 statement said:

> Our overall review of the data suggests that the 1980 changes have not significantly influenced the rate of reported incidents. It therefore does not appear from the data we have that a recall campaign, in which a mechanical alteration of the vehicles' transmissions would be attempted, promises any greater reduction of "park-to-reverse" incidents than has already been accomplished by Ford's 1981 notification and warning label campaign pursuant to the settlement agreement.
>
> No evidence presented since the date of the initial determination convinces me that a final defect determination is currently warranted or even likely if further investigation is undertaken.
>
> The evidence also continues to support the inference that drivers who misposition their gear shift levers and who fail to take precautions such as turning off their engines and setting their parking brakes have contributed to "park-to-reverse" incidents. I must also note that the effect of the publicity associated with this matter continues to make judgments concerning the differences in reported incident rates extremely difficult.

Please explain to what extent the GAO disagrees with these judgments or conclusions of the Administrator?

7. The hearing (transcript, p. 95) indicates that GAO believes that the 1980 settlement was a complete failure. I have read the

GAO statement and do not find anything therein to indicate such failure. Have they indicated such a failure?

Sincerely,

John D. Dingell
Chairman
Subcommittee on
Oversight and Investigations

cc: Honorable Timothy E. Wirth
Chairman
Subcommittee on Telecommunications,
Consumer Protection, and Finance

Honorable Matthew J. Rinaldo
Ranking Minority Member
Subcommittee on Telecommunications,
Consumer Protection, and Finance

Honorable James T. Broyhill
Ranking Minority Member
Subcommittee on Oversight and Investigations

Honorable Diane K. Steed
Administrator
National Highway Traffic Safety Administration

NINETY-NINTH CONGRESS

JOHN D. DINGELL, MICHIGAN, CHAIRMAN

RON WYDEN, OREGON
DENNIS E. ECKART, OHIO
JIM SLATTERY, KANSAS
GERRY SIKORSKI, MINNESOTA
JAMES H. SCHEUER, NEW YORK
JAMES J. FLORIO, NEW JERSEY
THOMAS A. LUKEN, OHIO
JOHN BRYANT, TEXAS
HENRY A. WAXMAN, CALIFORNIA
RICHARD C. SHELBY, ALABAMA

JAMES T. BROYHILL, NORTH CAROLINA
BOB WHITTAKER, KANSAS
THOMAS J. BLILEY, JR., VIRGINIA
MICHAEL G. OXLEY, OHIO
MICHAEL BILIRAKIS, FLORIDA
DAN SCHAEFER, COLORADO
FRED J. ECKERT, NEW YORK

MICHAEL F. BARRETT, JR.
CHIEF COUNSEL/STAFF DIRECTOR

U.S. House of Representatives
Subcommittee on Oversight and Investigations
of the
Committee on Energy and Commerce
Washington, DC 20515

ROOM 2323
RAYBURN HOUSE OFFICE BUILDING
PHONE (202) 225-4441

September 9, 1985

Honorable Diane K. Steed
Administrator
National Highway Traffic Safety Administration
Department of Transportation
400 Seventh Street, S. W.
Washington, D. C. 20590

Dear Ms. Steed:

As you now know, this Subcommittee with the help of the General Accounting Office (GAO), is examining the National Highway Traffic Safety Administration's (NHTSA) actions under the law relative to the so-called "Ford transmission case." A similar investigation by the GAO is being done for Chairman Wirth. On August 1, 1985, you testified before the Subcommittee on Telecommunications, Consumer Protection and Finance. At that hearing, I indicated that I would ask you to reply to additional questions concerning this matter and our Subcommittee's investigation. I, therefore, request your response by September 30, 1985 to the following questions:

1. Enclosed is the GAO statement of August 1. Please identify any differences or concerns you have with the GAO comments and provide your views. (See statement of Dexter Peach included in this hearing.)

2. There is considerable confusion about various graphs or charts prepared by NHTSA, the GAO, and apparently Chairman Wirth's Subcommittee, concerning what they show. I request that you examine each of these graphs and charts provide your comments thereon with the hope of resolving some or all of the confusion. Please also explain why Mr. Parker, at the hearing (Transcript, p. 80), makes a distinction between the GAO presentation of "fatalities per year" and the "death-per-day-rate." What is the significance or importance of both? What does each approach show or not show? Also, please explain the "300 percent" and "194 percent" figures mentioned at the hearing, including how each is calculated and why? At the same time, please provide a table showing the number of fatalities attributable to this problem for all vehicles for the period 1970 to the present.

3. Enclosed is my letter to the GAO. Please also review all of questions 1 through 3 and 5(a) and (b) and provide your reply to those questions.

4. Please explain how NHTSA analyzes fatalities and accident, injury, and incident data in this case and all others and what, if any, verification of such data is provided. What does the term "verification" mean and involve?

5. What are your views on the settlement in light of the reports of accidents, injuries, incidents, and fatalities since it occurred? What has NHTSA learned in regard to the use of settlements for future defect cases?

6. The ODI Staff Report of July 3, 1985 states (p. 5) that the only "new" information "obtained or learned" by NHTSA "consists of reports of accidents or incidents which were previously unknown to the agency, although the actual date of the occurrence may have preceded the settlement." Please explain why NHTSA did not know of these reports and the significance of these new reports. Is this delay in reporting also likely after the settlement?

7. The ODI report also states (pp. 5 and 30):

> Neither the CFAS petition nor any other source has revealed new technical information that NHTSA has not previously studied and reported on. CFAS' petition presents no technical evidence regarding Ford's 1980 "mechanical fix." Rather, CFAS argues that proof of the success of Ford's 1980 mechanical changes can be seen in the "dramatic" reduction of deaths, accidents, and injuries in the post model year 1980 Ford vehicles. The agency's June 1980 report on transmissions, which we shall not repeat here, discussed the 1980 changes in detail, including all of the technical points subsequently raised by two plaintiffs' expert witnesses who briefed NHTSA representatives on May 31, 1985. This discussion will not be repeated here. (Footnote omitted.)
>
> * * *
>
> 1. ODI has discovered not new technical information bearing on the problem which would alter the agency's findings as stated in its June 1980 report.

You apparently discussed this last statement to some extent at the hearing (see Transcript, pp. 93-101.) What was the June 1980 report of the ODI? Is that the report that you state was never adopted by either NHTSA or the DOT as a final report? What was the ODI findings in 1980? Under the law, what is the status of those findings if they were never adopted by NHTSA or the DOT? Was the settlement in lieu of those findings? What does the above quoted matter mean, in light of your July 12, 1985 letter which states:

> Because of the absence of new information suggesting the presence of a safety-related defect, and the uncertain prospects for the effectiveness of proposed mechanical remedies, the petition to reopen this investigation is denied.

Does NHTSA believe a defect exists in regard to the affected vehicles and if so, would NHTSA reopen the investigation or start a new investigation.

8. It has been reported to the Subcommittee that there have been about 70 "recall" requests made by NHTSA to auto and equipment manufacturers. (I note that Chairman Wirth has noted 67 such requests.) Is that correct? Are these truly recall requests or are they information requests? Please explain. What portion of those requests, if any, were ignored or inordinately delayed by such manufacturers? What has NHTSA done about each of them? Please identify all of these requests in table form and indicate in chronological order the actions taken regarding each request by NHTSA and such manufacturers.

Please provide a copy of your reply to the above questions to the GAO for its consideration in regard to the investigation GAO is performing for this Subcommittee.

Sincerely,

John D Dingell

John D. Dingell
Chairman
Subcommittee on
Oversight and Investigations

Enclosure (2)

cc: Honorable Charles A. Bowsher
Comptroller General
General Accounting Office

Honorable Timothy E. Wirth
Chairman
Subcommittee on Telecommunications, Consumer Protection and Finance

Honorable Matthew J. Rinaldo
Ranking Minority Member
Subcommittee on Telecommunications, Consumer Protection and Finance

Honorable James T. Broyhill
Ranking Minority Member
Subcommittee on Oversight and Investigations

NINETY-NINTH CONGRESS

JOHN D. DINGELL, MICHIGAN, CHAIRMAN

RON WYDEN, OREGON
DENNIS E. ECKART, OHIO
JIM SLATTERY, KANSAS
GERRY SIKORSKI, MINNESOTA
JAMES H. SCHEUER, NEW YORK
JAMES J. FLORIO, NEW JERSEY
THOMAS A. LUKEN, OHIO
JOHN BRYANT, TEXAS
HENRY A. WAXMAN, CALIFORNIA
RICHARD C. SHELBY, ALABAMA

JAMES T. BROYHILL, NORTH CAROLINA
BOB WHITTAKER, KANSAS
THOMAS J. BLILEY, JR., VIRGINIA
MICHAEL G. OXLEY, OHIO
MICHAEL BILIRAKIS, FLORIDA
DAN SCHAEFER, COLORADO
FRED J. ECKERT, NEW YORK

MICHAEL F. BARRETT, JR.
CHIEF COUNSEL/STAFF DIRECTOR

ROOM 2323
RAYBURN HOUSE OFFICE BUILDING
PHONE (202) 225-4441

U.S. House of Representatives
Subcommittee on Oversight and Investigations
of the
Committee on Energy and Commerce
Washington, DC 20515

October 30, 1985

Honorable Charles A. Bowsher
Comptroller General
General Accounting Office
441 G Street, N. W.
Washington, D. C. 20548

Dear Mr. Bowsher:

Thank you for your October 18, 1985 reply to my September 9 letter concerning the issues raised at an August 1 hearing at which your agency testified concerning its preliminary findings relative to the investigation for our Subcommittee of the handling by the National Highway Traffic Safety Administration (NHTSA) of complaints about Ford automatic transmissions.

I am pleased that you plan a single report to our Subcommittee and the Subcommittee on Telecommunications, Consumer Protection, and Finance. I am also pleased that you will address the matters raised in my September 9 letter in the report. However, because of the specific nature of the questions and the need for a complete record, I also request your agency's response to each of these questions as quickly as possible. They relate to your agency's testimony and the need to clarify that testimony. In this regard, I also received NHTSA's reply to my letter to that agency. The letter indicates that a copy was furnished to your agency for its consideration in the conduct of this investigation.

Finally, I appreciate your firm assurances that the General Accounting Office will continue to "strive to produce high quality reports on a timely basis." That assurance is welcome. It is consistent with your agency's long-standing practice of thoroughness, as well as fairness and balance in its investigations and reports. That practice is expected in this investigation, as well as all others conducted for this Subcommittee.

Sincerely,

JOHN D. DINGELL
Chairman
Subcommittee on
Oversight and Investigations

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D C 20548

OCT 18 1985

RCED-5-71

The Honorable John D. Dingell
Chairman, Subcommittee on Oversight
  and Investigations
Committee on Energy and Commerce
House of Representatives

Dear Mr. Chairman:

This is in reference to your letter of September 9, 1985, which raised several issues and posed a series of questions for the record relating to our August 1, 1985, testimony before the Subcommittee on Telecommunications, Consumer Protection, and Finance.

At the outset, let me clarify our reporting objective. We now plan to issue a single report to both you and Chairman Wirth. Chairman Wirth's office has advised us that the record will be held open for the issuance of the report which will be included in its entirety for the record. We will address your September 9 questions as a part of the report as well as any issues raised by the National Highway Traffic Safety Administration's response to your September 9 letter to Administrator Steed and any other unresolved issues raised at the hearing.

In your letter, you indicated your support for our taking the necessary time to assure the accuracy of our work. Assuring that our reports are of the highest quality is one of my prime concerns. In keeping with that concern, GAO's policy is to have all reports issued by this Office meet the same high quality standards whether signed by me or by one of our division directors.

Your September 9 letter also raises several questions about the possibility of our final report containing conclusions and recommendations. Our usual practice is to include conclusions and recommendations in any report if they are warranted by the facts. Mr. Peach, in his August 1 testimony, cautioned that the information in his statement was to be considered tentative since we had not yet completed all our work. With the completion of our work and development of our final report we will include any conclusions and recommendations that we believe are appropriate.

In closing, I would like to express my appreciation for your comments about our sensitivity to timeliness. We shall continue to strive to produce high quality reports on a timely basis.

Sincerely yours,

Charles A. Bowsher

Charles A. Bowsher
Comptroller General
of the United States

U.S. Department
of Transportation
**National Highway
Traffic Safety
Administration**

The Administrator

400 Seventh St., S.W.
Washington, D.C. 20590

OCT 18 1985

The Honorable John D. Dingell
Chairman, Subcommittee on Oversight and Investigations
Committee on Energy and Commerce
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your letter of September 9, 1985, which asked additional questions relating to Ford automatic transmissions as a follow-up to my testimony of August 1, 1985, on that subject before the Subcommittee on Telecommunications, Consumer Protection and Finance. As you may know, the Center for Auto Safety (CFAS) and other plaintiffs filed a lawsuit on September 9 in United States District Court challenging NHTSA's decision denying CFAS' administrative petition to conduct an expedited investigation of alleged safety-related defects in Ford transmissions. Center for Auto Safety v. Dole, D.D.C. No. 85-2861 (copy of complaint enclosed as Attachment "A".) Because some of your questions involve substantive issues that are the subject of this pending litigation, I have generally limited my responses to factual information in the public record as of September 9.

For convenience, this response repeats the full text of your question before the relevant response.

1. Enclosed is the GAO statement of August 1. Please identify any differences or concerns you have with the GAO comments and provide your views.

Answer

Because of the pending litigation, I do not believe it would be appropriate for NHTSA to undertake a detailed analysis of the GAO's statement of August 1 to the Subcommittee on Telecommunications, Consumer Protection and Finance. My reasons for denying the CFAS petition are set out fully in my July 12, 1985, letter to CFAS, and in the July 3, 1985, Report prepared by this agency's Office of Defects Investigation (ODI) (copies enclosed as Attchments "B" and "C"). To recapitulate briefly, the data the agency collected to analyze the CFAS petition showed that so-called "park-to-reverse" incidents occur among vehicles made by all major manufacturers, although reported incident rates for Ford vehicles may have been somewhat higher than those for other manufacturers; that the overall trend in the number and rate of reported incidents and accidents has continued downward, and the degree of difference between the rate of reported Ford incidents and reports of other manufacturers is smaller than it appeared in 1980; and that our overall review of the data does not suggest that the 1980 changes which Ford made to the designs of its automatic transmissions have significantly influenced the rate of reported incidents. I therefore denied the CFAS petition, based upon the absence of new information suggesting the presence of a safety-related defect, and the uncertain prospects for the effectiveness of proposed mechanical remedies. I have not found anything in the August 1 analysis presented by GAO that has caused me to reconsider my decision.

2. There is considerable confusion about various graphs or charts prepared by NHTSA, the GAO, and apparently Chairman Wirth's Subcommittee, concerning what they show. I request that you examine each of these graphs and charts provide your comments thereon with the hope of resolving some or all of the confusion. Please also explain why Mr. Parker, at the hearing (Transcript, p. 80), makes a distinction between the GAO presentation of "fatalities per year" and the "death-per-day-rate." What is the significance or importance of both? What does each approach show or not show? Also, please explain the "300 percent" and "194 percent" figures mentioned at the hearing, including how each is calculated and why? At the same time, please provide a table showing the number of fatalities attributable to this problem for all vehicles for the period 1970 to the present.

Answer

(a). Graphs and Charts

At the hearing conducted by Chairman Wirth in July 1983, NHTSA submitted two line graphs on Ford transmissions (copies enclosed as Attachments D and E) as exhibits to my testimony. The first line graph (Attachment D) depicted "REPORTED C802 PARK TO REVERSE FATALITIES AND EST. VEHICLES ON THE ROAD (VOR) VS YEAR", from 1971 through mid-1983 (the time when the graph was prepared and submitted). It showed, by date of occurrence, a total of 158 Ford transmission fatalities which ODI counted as "yes". (This line was superimposed over a second line that showed the estimated number of vehicles on the road, by date.) That graph did not include any fatalities which ODI would now classify as "possible" and which were then classified as "insufficient detail." The second line graph (Attachment "E") was entitled "RATE OF REPORTED C8-02 FATAL ACCIDENTS PER EST. VEHICLES ON THE ROAD VS. YEAR". It represents the ratio between the values depicted on the two lines appearing on the first graph; shows the rate (in percentages) of reported fatal accidents by year; and, like the first graph, ends its presentation of data at mid-1983, the time of its preparation and submission.

By letter dated October 3, 1983, NHTSA submitted two (2) charts and four (4) additional line graphs to Chairman Wirth. (Attachment F, also enclosed.) These charts were updated through 10/03/83. Several of these charts included accidents classified by ODI as "insufficient detail" in addition to accidents classified as "yes." We specifically advised Chairman Wirth in our letter that the consolidation of the "insufficient detail" and the "yes" reports into single graphs did not materially affect any of the conclusions represented by the graphs that showed only "yesses."

At the August 1, 1985, hearing, Chairman Wirth displayed a large chart, which purported to be an enlarged version of the single line graph depicting the fatality rate (Attachment E) which NHTSA had submitted at the hearing two years earlier. We do not have a copy of that large chart. However, a member of our staff has recently examined that chart at the offices of Chairman Wirth's subcommittee, and has reported that the line shown on the augmented graph ends at 1984 rather than in mid-1983. Apparently, either the line was extended or the dates appearing below the line were moved during enlargement or printing. We do not know the circumstances in which this occurred, nor do we speculate on them. However, we believe that this apparent alteration of that line graph has caused some of the confusion to which you referred in your letter.

One additional point also may require clarification. During my July 1983 testimony, I stated that NHTSA was aware of 26 reported Ford transmission fatalities which had occurred since the December 30, 1980 settlement. Transcript, Attachment L, p. 167. The hearing transcript shows that, in making that statement, I referred to a chart, but it is not clear whether this chart was submitted for the record. A copy of the chart in question is enclosed as Attachment H. ODI prepared the chart before the July 1983 hearing, and the line graph (Attachment D) that we submitted at the July 1983 hearing was derived from the same data source as that chart. At the August 1, 1985, hearing, Chairman Wirth also discussed a bar chart that appears as Figure 6 on page 19 of ODI's July 1985 Report (copy annexed as Attachment G). That bar chart cannot be compared directly with the line graph in Attachment D for a number of reasons: (1) the bar chart covers fatalities reported through late June 1985, and includes some fatalities which occurred prior to July 1983 but which were not reported to ODI until after July 1983 because of lags in reporting (see answer to question 6, infra), whereas the line graph includes fatalities reported only through July 1983; (2) the bar chart covers model year 1966-1979 vehicles, whereas the line graph covers only model year 1970-1979 vehicles; and (3) the bar chart includes fatalities which ODI classifies as either "yes" or possible, whereas the line graph includes only fatalities which ODI classified as "yes" in 1983. It is true that as of July 1985, NHTSA was aware of more reported post-settlement fatal accidents involving Ford automatic transmissions that occurred between the settlement and July 1983 than the agency was aware of in July 1983. I stand by my July 1983 testimony that as of that date, NHTSA was aware of 26 reported post-settlement Ford transmission fatalities.

b. Rates

In our presentation of fatality rates at the July, 1983 hearing, NHTSA described fatalities on both an annualized and a per day basis. The choice of format depends at least in part on the intervals of time being presented. For example, the graph shown in Attachment E covers data that spans several years, which is more practically presented in annual form.

In contrast, because the chart shown in Attachment H examines intervals of time which are not equal, some of which are relatively short, it is preferable to present these data in a format that uses days rather than years as the denominator. The difference is only one of presentation -- the substance of both rates is the same. In its July 1985 Report, at Figure 6, page 19, the ODI staff presented annual fatality rates, depicted in bar chart form (Attachment G) because it concluded that this presentation illustrated the significant data in the most readily comprehensible format.

c. Percentages

Attachment H is a copy of a chart entitled "TOTAL UNVERIFIED C8-02 FAILURE REPORTS (LESS DUPLICATES) SINCE DECISION (12/31/80) EXCEPT FOR FAILURE WITH DEATH (SEE FOOTNOTE)". This chart provided the basis for the "300 per cent" statistic quoted in your question. The last line of the table entitled "Failure Dates" that appears on this chart shows a daily rate of "failure with death" of .02 in the column entitled "June 1, 81 --Present". The second bullet item that appears below the table under "Notes" states that "[t]he comparable death/day rate for reported fatalities occurring between case opening (October 18, 1977) and December 31, 1980 is approximately (.06)." Please note that .06 percent is three times .02 percent.

At the July 1983 hearing, I testified that ". . . the average rate of fatalities reported per day was three hundred percent higher before completion of the warning label program than it is today." That figure represents a comparison, expressed in percentage form, of the rates noted above.

ODI prepared a chart comparable to attachment H in December 1984. This chart is annexed as Attachment I. The data depicted on chart I served as the basis for the "194%" attributed to George Parker. The reason for the change in the percentage is that additional data had been reported to the agency between July 1983 and December 1984, which indicated a decline in the difference between the two rates. However, even after adjustment for the newly obtained data, as of December 1984, the pre-settlement fatality rate was almost twice the post-settlement fatality rate.

d. Table

The bar chart that appears at Figure 6, page 19 of ODI's July 1985 Report (Attachment G) presents the table you requested. It shows the number of fatalities attributed to Ford transmission accidents that occurred between the settlement and June 27, 1985. Please note that, although your question requests that we display the data for vehicles from the 1970 model year to the present, our table also displays data beginning with the 1966 model year, because the Center for Auto Safety petition covered the years 1966-1979. Also, this table includes both reported fatalities that ODI classifies as fatalities resulting from failure to engage or hold in "park", and reported fatalities that ODI classifies as "possible" fatalities resulting from failure to engage or hold in "park".

Since ODI prepared the bar chart (Attachment G), we have received and are investigating reports of two additional transmission fatalities involving 1966-1979 Ford vehicles.

3. Enclosed is my letter to the GAO. Please also review all of questions 1 through 3 and 5(a) and (b) and provide your reply to those questions.

(GAO question) 1. (a) What was NHTSA's specific commitment to the court to monitor the 1980 settlement between Ford and DOT? Did the settlement agreement or the court spell out any monitoring requirements?

(b) What was NHTSA's specific monitoring commitment to Chairman Wirth's Subcommittee? Was that commitment changed later by NHTSA? If so, how?

(c) How do these "commitments" differ?

(d) The GAO witness appears to be critical of NHTSA's monitoring efforts, noting that NHTSA (corresponded with Ford "13 times" since May 1981, but most of this correspondence "was prompted by outside sources"). Three letters were noted by GAO as "initiated by NHTSA." The GAO criticism concerns me, because I believe NHTSA must comply with such commitments. But it is not clear to me (after reading the GAO prepared statement) what GAO believes NHTSA should have done to meet each commitment. Please indicate when each letter was sent to Ford and explain what the agency failed to do to meet each so-called "commitment." Also, please explain what you believe the purpose of these so-called "commitments" and how they differed from NHTSA's obligations under the law. Did the settlement impose new duties on NHTSA that are not already required by law?

Answer

1.(a). In the litigation brought by the Center for Auto Safety to challenge NHTSA's settlement, one of the arguments which Justice Department and NHTSA counsel made in defending the settlement was that NHTSA "reserves its rights to take whatever action may be required under the statute and warranted by the development of its knowledge in this matter based on additional facts." (Quoted from the Acting Secretary's settlement letter of December 30, 1980.) In any event, section 156 of the Safety Act permanently provides the Secretary with such authority to investigate new information concerning alleged defects even after a recall is undertaken. 15 U.S.C. §1416.

While no specific commitment to monitor the settlement in any particular way was made to the court, NHTSA has undertaken repeated reviews of information including current reports of incidents as they have come to its attention. See Court of Appeals Brief for Appellees in Center for Auto Safety v. Lewis, No. 81-2270, pp. 11, 27-28 (copy attached as Attachment J).

1.(b) NHTSA's specific monitoring commitments to Chairman Wirth are found in the portions of letters and hearing transcript annexed as Attachments K and L. During my opening statement at the July 1983 hearing, I stated that the agency "will be investigating all fatal accidents involving Ford transmissions." (Attachment L, enclosed, at page 167). In my letter of October 3, 1983, I told Chairman Wirth that NHTSA would investigate all future new reports of fatal Ford transmission accidents, unless sufficient facts to establish that a "Park-to-Reverse" fatality had occurred were contained in the initial report of the fatality. (Attachment K, Item 4). In my letter of January 10, 1984, I again stated that my intention was to investigate newly-reported Ford transmission fatalities rather than fatalities that had been reported prior to the hearing; that we would investigate both reported fatalities within the scope of C8-02 and, as appropriate, reported fatalities involving pre-1970 vehicles; and that we would not investigate reported fatalities where the reports already in our possession contained sufficient information to allow us to reasonably conclude that a "Park-to-Reverse" incident had occurred in the absence of other compelling reasons, such as the likelihood of uncovering new technical information. (Attachment K, Item 5).

1.(c). In its statements to Chairman Wirth, NHTSA has described its activities in a more specific way, but the activities are exercises of the agency's statutory authority, as referenced in the settlement letter and referred to in the briefs and arguments in court.

1.(d). NHTSA believes that it has met its commitments to monitor the settlement. A list of NHTSA's correspondence with Ford on this subject is enclosed as Attachment M.

The settlement imposed no duties on NHTSA which are not already part of its legal responsibility to investigate allegations of safety related defects in motor vehicles and motor vehicle equipment. As the court held in CFAS v. Lewis, 685 F.2d 656 (D.C. Cir. 1982), the agency must exercise its discretion in allocating resources in meeting this responsibility and it was a proper exercise of this discretion for the agency to close its investigation of Ford vehicles pursuant to the 1980 settlement. Thereafter the agency continued to allocate substantial resources to reviewing information brought to its attention and, where appropriate, to seeking additional information from other parties, including Ford Motor Company.

As stated above in response to GAO question 1(c), the agency has made no specific commitments to conduct any additional investigative activity, other than the commitment we made to Chairman Wirth at the July 1983 hearing, and reiterated in subsequent correspondence with Chairman Wirth, to investigate fatal accidents.

(GAO question) 2. The GAO statement notes that, in 1977, NHTSA opened an investigation because of reports of "Ford vehicles which failed to hold or engage in park resulting in the unexpected movement of the vehicle." Thereafter, GAO refers to the matter as the "park-to-reverse" case or fatalities.

(a) Does this same explanation apply to non-Ford vehicles, as well as Ford vehicles?

(b) Does this explanation assume that in all cases the engine is running and the brake is off (or is not working effectively) and the vehicle is unattended by a licensed driver?

(c) Does it assume that in all vehicles (Ford and non-Ford) the failure to engage or hold in park resulted in the shift landing only in "reverse" or is it possible for it to also slide over to "neutral" or "drive"?

(d) Does it assume, in all cases, that there is no human involvement?

(e) What effect does the failure to hold or engage in park have on the movement of the vehicle (Ford and non-Ford) depending on the incline of the road surface? For example, in such cases, is it possible that rather than go backwards, the vehicle (even if in reverse and with or without the engine on) might go forward and injure or kill someone? Has that occurred? How often? Is that situation covered by this case? If not, why not?

Answer (to GAO question 2)

2(a). I assume that your reference to "this same explanation" applies to GAO's substitution of the term "park-to-reverse" for "vehicles which failed to hold or engage in park resulting in the unexpected movement of the vehicle." If so, the answer to your question is yes. As I stated in my July 12, 1985, petition denial, as well as on other occasions, the record shows that Ford and non-Ford vehicles have been reported to have failed to hold or engage in park, and that unexpected vehicle movement reportedly has resulted.

2(b) No. Unpowered vehicle "rollaways" may also result from the failure of a vehicle to engage or hold in park, and even an attended vehicle may fail to engage or hold in "park".

2(c) It is possible for a failure of the transmission to engage or hold in park to result in a shift into neutral or drive. However, the likelihood of this occurring must be compared with the possibility that the driver left the vehicle in "neutral" or "drive" (i.e., did not attempt to shift into park), or that the lever was subsequently moved into the "neutral" or "drive" position. Generally, ODI believes that a shift from "park" into "drive" is highly unlikely in any make of vehicle, and has not included reports of such shifts in its "count" of "park-to-reverse" fatalities. See July 1985 ODI Report at p. 18.

2(d) One of the critical issues throughout this proceeding has always been the human factors associated with these accidents. As the Court of Appeals noted in upholding the previous settlement, "[t]he Department would have faced great difficulties in sustaining its burden to prove the existence of a defect, because the interaction between driver and vehicle seemed a critical factor in the transmission malfunctions." (Center for Auto Safety, Inc. v. Lewis, 685 F.2d 656, 663 (D.C. Cir. 1982).

2(e) The incline of the road surface (both the direction and the degrees of slope) may affect the direction in which any vehicle moves, given a failure to hold or engage in park. It is possible for a vehicle to move forward on a downward incline, when the transmission is in the "reverse" gear position. This may have occurred in some instances. (We cannot specify whether, or how many times, it has reportedly occurred, without reviewing every report). This situation is covered by the problem description "failure to hold or engage in park", which was specifically intended to cover other unexpected vehicle movement besides movement under power in reverse.

(GAO question) 3. In the GAO statement (pp. 7-8), GAO notes that prior to settlement, NHTSA developed "an extensive data base" of over "23,000 reports, involving more than 12,000 vehicles, received from Ford and from consumers." The GAO also states that after the settlement, NHTSA developed a new data base which "contains about 1,700 entries." The GAO then states:

> While we have not completed a detailed examination of these entries, we have ascertained that they consist of unverified incident and accident reports.

(a) What were the sources of the 1,700 entries and the 23,000 reports? Was Ford one of the sources?

(b) What do you mean by the term "report," in regard to the pre-settlement data? What do you mean by the term "entries" in regard to post settlement data?

(c) Why was there more reports than vehicles involved in case of pre-settlement?

(d) Please explain to what extent all the "reports" prior to settlement were verified. If they too were "unverified," what is the significance of GAO stressing that the 1,700 "entries" were "unverified."

(e) The July 3, 1985 "ODI Staff Report" states (p. 7) that Ford "criticized" the NHTSA pre-settlement database "as flawed in concept and misleading because the number of actual complaint vehicles represented only about one-half of the 23,000 incidents, since complainants frequently reported multiple failures." The ODI staff report does not refute or disagree with that criticism. Presumably, ODI accepted it as valid. Is there any reason for GAO to disagree with that criticism or to be critical of the ODI staff for not refuting or disagreeing with Ford?

The issue came up at the hearing (p. 50 of transcript) as follows:

> Mr. PEACH. I think it is fair to note that NHTSA never went through to try to clean up the 23,000 data base and determine the extent to which there was double counting, overcounting or other things like that. That was an issue that was never resolved because, as I understand it, NHTSA did not try to review and clean up the data base to take care of that.
>
> Mr. BRYANT. But that is just another way of saying they never did use their data base, isn't it? If you use the data base, you review, you clean up, you take out what is valuable and leave behind what is not valuable; and they did not do that, did they?
>
> Mr. PEACH. That's right. I will give you one example--

Mr. BRYANT. I just want to get to the point. They didn't do that did they?

Mr. PEACH. No

Mr. BRYANT. In sum, they didn't use their data base, did they?

Mr. PEACH. No

I do not understand the GAO's apparent criticism in this reply of the ODI for not using the "23,000 data base." To what extent does ODI "review," "clean up," and "take out what is valuable" any data base for purposes of deciding whether or not to open a defect investigation? I observe that, in its November 9, 1984 report to this Subcommittee on defect procedures (B-213545), the GAO said ODI depends on receipt of information "from several sources," including individual consumers, hotline calls, Members of Congress, and others. "Using this information, ODI decides to initiate an inquiry or engineering analysis based on its professional judgment." Did ODI do anything different in regard to this case?

(f) Mr. Peach, in his later colloquy with Congressman Bryant (Transcript, pp. 53-55), agrees that Ford data used by the ODI staff was unverified and unverifiable. What is the significance or importance of that GAO conclusion? Was the Ford data any more verifiable without work than the NHTSA data of 23,000? Did Ford suggest its data base was verified or more verifiable?

3.(a). GAO used the term "entries" to describe the records in NHTSA's post-settlement data base. One such record exists for each individual who has corresponded on the subject of Ford transmissions since the settlement. This data base includes 1,700 records ("entries") that report at least 974 incidents. The 1,700 "entries" are all of the "entries" in NHTSA's file of reports which the agency has received from all sources other than Ford since the settlement. In addition, Ford provided NHTSA with information relating to reports it had received from approximately 6,400 consumers since the settlement. These reports include some duplicates of the events reported in NHTSA's file.

Although GAO used the term "23,000 reports," it is more accurate to state that NHTSA's C8-02 data base included reports of 23,000 incidents, which the agency received from the inception of the investigation until the preparation of ODI's Phase I Report. Ford was a major source of these reports.

3.(b). The term "report" in regard to the pre-settlement data refers to each incident reported, whether the incidents were without harm or resulted in accident, injury or fatality. There were approximately 23,000 incidents reported. These reports involved a substantially smaller number of vehicles because many communications, such as letters, NHTSA vehicle owner questionnaire forms, or Ford hotline forms were received that reported more than one incident. Since the settlement, ODI has made 1700 "entries" into its file. Each such "entry" may involve none, one or more separate incidents. See answer to 3(a), above.

3.(c). See answer to 3(b) above.

3.(d). Because of the large numbers of complaints and owner reports which NHTSA receives in its defects investigations it is impossible to verify most such reports by interviewing owners or other witnesses or by on-site inspection. This is standard practice in any NHTSA defect investigation. However, NHTSA conducts engineering studies to learn the characteristics of an alleged defect's failure mode, and endeavors to evaluate reports carefully to compare them to other relevant reports and to pertinent engineering evidence in an effort to determine whether they are germane to the investigation.

Most of the reports and entries in the Ford transmission investigation during 1977 to 1980 as well as the post settlement review were analyzed statistically without verification by independent investigation of the incidents reported. However, NHTSA has conducted independent investigations of many post-settlement as well as pre-settlement reports of fatal accidents, where such investigation has appeared to be warranted by the likelihood that more information could be obtained. These procedures are consistent with those followed by the agency in other investigations. We do not believe that any significance should be attached to the unverified nature of either the pre- or post-settlement reports.

3.(e). The validity of Ford's criticisms of the NHTSA pre-settlement data base was one of the issues presented by the C8-02 investigation which was not resolved by the settlement. ODI again reviewed and purged obvious duplicates from its 23,000 report data base following NHTSA's receipt of Ford counsel's "Preliminary Comments" on the June 1980 initial determination, and does not agree with Ford's criticism. However, Ford's counsel repeated such criticisms in their response to the Center for Auto Safety's 1985 petition.

The issue was referred to in the recent ODI Staff Report to illustrate the dispute between Ford and NHTSA's technical staff, which the parties agreed to leave unresolved when the settlement was reached. The agency continues to believe that it is an appropriate exercise of its discretion not to allocate further resources in what appears likely to be a futile attempt to resolve this matter.

It is NHTSA policy that ODI should obtain and rely on the best evidence possible in each of its cases and that it undertake analyses including statistical compilations of information where appropriate. In light of the pending litigation, I believe that further comment on this subject at this time would be inappropriate.

3.(f). It is NHTSA's understanding that both the pre-settlement ODI data base and the compilation of reports received recently from Ford reflect for the most part communications from owners which have been reviewed to assess the likelihood of their relevance, but which have not been verified by independent investigation. We have no basis for believing that either collection of reports is more verifiable than the other.

(GAO question) 5. The ODI report states that the "CFAS petition emphasizes fatality data as grounds for the need for a recall, and much of the congressional (including GAO) oversight of this matter has focused on fatality data." I understand from the Center's documents and NHTSA's July 12 letter that the petition was to "initiate an expedited defect investigation," not a recall, although a recall might follow.

(a) Taking into consideration your November 1984 report to this Subcommittee, is it normal for ODI and NHTSA to rely on fatality data in deciding whether or not to initiate a defect investigation? In GAO's analysis of other NHTSA defect investigations, has GAO found any where the data used covered only fatality reports? Was there less weight given by NHTSA to nonfatal incidents and accidents in those analyses? Did NHTSA require that such nonfatal data be verified before NHTSA would consider the data in other investigations? How does NHTSA weigh fatality rate data in all investigations, including this case? Why then does GAO emphasize fatality data in this or any case? Do you understand, based on NHTSA practice, that fatality and fatality rate trends should outweigh NHTSA injury, accident, and incident rate trends (particularly when such trends appear to differ) when NHTSA analyzes a potential defect for investigation?

(b) The GAO prepared statement states that in "contrast" to incident and accident reports, "fatality reports tend to have considerable documentation and independent verification." The word "tend" implies some uncertainty about the verification of such data. Was all such data verified in this case? What does "verification" mean in this case in regard to fatalities and non-fatalities? Does it mean the fatality was a so-called Ford or non-Ford park-to-reverse case? Please explain.

Answer

5.(a). In its decisions whether to initiate defect investigations it is always NHTSA's policy to consider any accident, injury or fatality data that is available. We believe this policy is consistent with our statutory mission, as set forth in the Safety Act, 15 U.S.C. §1381. I am unaware of any case in which NHTSA has considered only fatality data in deciding whether to initiate an investigation. NHTSA does not give less weight to nonfatal accidents and incidents, except to the extent that there may be evidence indicating that fatalities and serious injuries have not occurred and that the safety consequences of an alleged defect may be relatively slight. Such instances are rare, however, as the risk of motor vehicle accidents usually includes the risk of serious injury and fatality.

Fatal accidents are always of great concern to NHTSA. However, care must be exercised in evaluating fatal accident reports, especially where the driver has died in a single-vehicle accident, because it may be difficult or impossible to reconstruct the events leading up to the incident.

In light of the pending litigation I believe that further comment on this subject would be inappropriate at this time.

5.(b). In the Ford transmission investigation, as with other defect investigations, fatal accidents are reported to the police, and police reports are usually available. Often fatal accidents are more likely to result in litigation and attendant further investigation. Also, because they are obviously the most serious accidents, NHTSA has made an effort to conduct at least some level of independent investigation of many of the fatal accidents in this case. For this reason there may be more documentation of the fatal accidents. However, this does not necessarily mean that the difficulties of evaluation are overcome in most cases.

The recent ODI Staff Report suggests that the process of analysis of fatalities for both Ford and non-Ford alleged park-to-reverse incidents did not amount to "verification" upon which all interested parties would agree.

In light of the pending litigation I believe that a further discussion of this question would be inappropriate at this time.

4. Please explain how NHTSA analyzes fatalities and accident, injury, and incident data in this case and all others and what, if any, verification of such data is provided. What does the term "verification" mean and involve?

Answer

NHTSA frequently receives written accident and incident reports either directly from consumers or from vehicle manufacturers, interest groups, or other sources. We rely heavily on this body of accident and incident data in making investigative decisions, although we lack the resources to conduct personal inspections or other follow-up inquiries into the large majority of these reported events. In this sense, these reports are "unverified". However, the controlling law in the D.C. Circuit concerning defect determinations confirms the appropriateness of our treating this body of data as a statistical source. U.S. v. General Motors Corp. (Wheels), 518 F.2d 420 (1975). We understand that the major automobile manufacturers also use the reports that they receive to make product decisions.

See answers to GAO questions 3(d) and 5(b), above.

5. What are your views on the settlement in light of the reports of accidents, injuries, incidents, and fatalities since it occurred? What has NHTSA learned in regard to the use of settlements for future defect cases?

Answer

As I stated in my July 12, 1985 letter to the Center for Auto Safety, I concluded, based on the analysis contained in the July 3, 1985 ODI Staff report (Attachment C) and on my judgment that no new engineering evidence had been developed with respect to this matter since NHTSA's original investigation of this alleged defect (ODI Case No. C8-02) was closed, that the additional data concerning incidents, accidents, injuries and fatalities tended to support earlier decisions to adopt and abide by the terms of the December 30, 1980 settlement agreement. My July 12 letter also noted that no effective mechanical remedy for these vehicles had been demonstrated; moreover, no remedy is 100% successful in terms of preventing additional incidents after a recall campaign is undertaken.

The 1980 settlement was upheld by the Court in CFAS v. Lewis, 685 F.2d 656, 685 (D.C. Cir. 1982). The Court's decision upheld the agency's authority to settle defects investigation cases without pursuing all of the elements of the repair, replacement or repurchase remedy provided by section 154 of the Safety Act, 15 U.S.C. §1414, and endorsed the agency's view that the costs and risks of likely litigation in C8-02 justified the compromise embodied in the settlement. The agency is convinced of the value of negotiated settlements in the prompt resolution of contested safety defects matters, but is prepared to litigate such issues when a settlement cannot be reached.

6. The ODI Staff Report of July 3, 1985 states (p. 5) that the only "new" information "obtained or learned" by NHTSA "consists of reports of accidents or incidents which were previously unknown to the agency, although the actual date of the occurrence may have preceded the settlement." Please explain why NHTSA did not know of these reports and the significance of these new reports. Is this delay in reporting also likely after the settlement?

Answer

NHTSA continually receives reports of accidents or incidents involving alleged safety related defects from a variety of outside sources, such as individual consumers, consumer groups, state or local government representatives, or vehicle manufacturers. Except in situations where the agency requests information directly from manufacturers, NHTSA has no control over the reporting of incidents. Reporting by consumers normally increases during periods in which an alleged defect is the subject of media attention or other publicity, and this reporting normally includes incidents which have occurred some time in the past.

Both during the investigation of Case C8-02 and after the settlement, there were periods of intense publicity regarding the transmission matter. This publicity was followed by increases in consumer reporting of incidents, some of which occurred at an earlier date. For example, reports received after the settlement included reports of incidents that occurred before the settlement. Also, following the settlement, we requested information from Ford, and, in response to P85-15, we requested information from all of the major domestic manufacturers. The manufacturers furnished reports in response to NHTSA's request, which included reports of earlier incidents. In the case of Ford, we requested information concerning 1966-1969 vehicles (which were not included in Case C8-02) for the first time during our data analysis of P85-15. Thus, for the first time, we received reports of some incidents which had occurred earlier in time.

I concluded in my July 12 decision that these new reports did not warrant reopening the investigation or disturbing the settlement, particularly in light of the absence of any new technical information concerning the alleged defect.

It is reasonable to expect that a delay in reporting would also occur after the settlement, particularly as publicity about the alleged transmission declined. In fact, the submissions that we received from manufacturers in response to our information requests during the data analysis phase of P85- demonstrated that such a lag in reporting took place.

Obviously, there is a reporting delay or "lag time" with respect to almost every report. The amount of "lag time" may vary substantially, up to as much as several years. Because the "lag time" issue is now the subject of litigation, I do not believe that it would be appropriate to comment further.

7. The ODI report also states (pp. 5 and 30):

> Neither the CFAS petition nor any other source has revealed new technical information that NHTSA has not previously studies and reported on. CFAS' petition presents no technical evidence regarding Ford's 1980 "mechanical fix." Rather, CFAS argues that proof of the success of Ford's 1980 mechanical changes can be seen in the "dramatic" reduction of deaths, accidents, and injuries in the post model year 1980 Ford vehicles. The agency's June 1980 report on transmissions, which we shall not repeat here, discussed the 1980 changes in detail, including all of the technical points subsequently raised by two plaintiffs' expert witnesses who briefed NHTSA representatives on May 31, 1985. This discussion will not be repeated here. (Footnote omitted.)
>
> * * *
>
> 1. ODI has discovered no new technical information bearing on the problem which would alter the agency's findings as stated in its June 1980 report.

You apparently discussed this last statement to some extent at the hearing (see Transcript, pp. 93-101). What was the June 1980 report of the ODI? Is that the report that you state was never adopted by either NHTSA or the DOT as a final report? What was the ODI findings in 1980? Under the law, what is the status of those findings if they were never adopted by NHTSA or the DOT? Was the settlement in lieu of those findings? What does the above quoted matter mean, in light of your July 12, 1985 letter which states:

> Because of the absence of new information suggesting the presence of a safety-related defect, and the uncertain prospects for the effectiveness of proposed mechanical remedies, the petition to reopen this investigation is denied.

Does NHTSA believe a defect exists in regard to the affected vehicles and if so, would NHTSA reopen the investigation or start a new investigation.

Answer

Section 152 of the Safety Act establishes a two-stage process for NHTSA to follow in deciding whether vehicles contain safety-related defects, 15 U.S.C. §1412. This process is described fully in Center for Auto Safety v. Lewis, supra, 685 F.2d at 658-659. ODI's June 1980 "Phase I" report was prepared at the conclusion of the initial phase of its investigation of ODI Case No. C8-02, and served as the basis for NHTSA's June 9, 1980 initial determination that a safety-related defect existed in certain 1970-1979 Ford vehicles equipped with C-3, C-4, C-6, FMX, and JATCO automatic transmissions. As required by section 152(a) of the Safety Act, 15 U.S.C. §1412(a), when NHTSA made its initial defect determination, it provided Ford, as well as interested members of the public, with copies of ODI's Phase I report. The agency never adopted the Phase I Report as a "Final Report", but it also never withdrew the June 9, 1980 initial determination or the Phase I report. The agency settled the matter and closed the investigation without making a final determination of defect, and the December 30, 1980 settlement agreement required Ford to notify owners of NHTSA's initial determination of the existence of a defect. NHTSA frequently closes investigative cases or settles investigations without deciding whether or not a safety-related defect exists.

With respect to your questions concerning whether NHTSA believes that a defect exists in the subject vehicles, I stated in my July 12, 1985 letter that I had decided to deny the CFAS petition because there were "not sufficient reasons to expect further investigation of this matter to result in a determination that the vehicles in question contain the alleged defect." Because the validity of this conclusion is now the subject of litigation, I do not believe that it is appropriate to comment further.

8. It has been reported to the Subcommittee that there have been about 70 "recall" request made by NHTSA to auto and equipment manufacturers. (I note that Chairman Wirth has noted 67 such requests.) Is that correct? Are these truly recall requests or are they information requests? Please explain, what portion of these requests, if any, were ignored or inordinately delayed by such manufacturer? What has NHTSA done about each of them? Please identify all of these requests in table form and indicate in chronological order the actions taken regarding each request by NHTSA and such manufacturers.

ODI has sent 77 recall requests (not information requests, which are more numerous) to manufacturers from 1979 through September 1985. The number of such requests by year, and the responses to the requests, are shown on the attached colored bar chart (Attachment N hereto.) Most manufacturers respond promptly to NHTSA recall requests, often by agreeing to a voluntary recall. However, responses to two such requests from 1984, and several from 1985, are still outstanding. Most of these involve small manufacturers of mini-motor homes, who have no previous experience in dealing with NHTSA. Some of these manufacturers apparently are uncertain of how to respond to a NHTSA recall request. Others have reportedly gone out of business.

The chronological chart that you requested showing these 77 recall requests and the responsive actions by the manufacturers and by the agency is annexed as Attachment O.

Sincerely,

Diane K. Steed

Diane K. Steed

cc: Honorable Charles A. Bowsher
Comptroller General
General Accounting Office

Attachment A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CENTER FOR AUTO SAFETY
2001 S Street, N.W.
Suite 410
Washington D.C. 20009
(202) 328-7700

ELEANOR A. KINGSLAND
Foster Hill Road
West Brookfield, MA 01585
(617) 867-7604

A.C. CAMPBELL
8303 Wallis Street
Fulshear, TX 77441-0666
(713) 644-7371

RICHEY, J.

THOMAS BOLD
6121 Winter Park Drive
Burke, VA 22015
(703) 487-4608

Plaintiffs,

v.

ELIZABETH H. DOLE, Secretary
U.S. Department of
Transportation
400 Seventh Street, S.W.
Washington D.C. 20590
(202) 426-1111

DIANE STEED, Administrator
National Highway Traffic
Safety Administration
400 Seventh Street, S.W.
Washington D.C. 20590
(202) 426-1836

Defendants.

Civil Action No. 85-2861

[illegible]

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, The Center for Auto Safety, Eleanor A. Kingsland, A.C. Campbell, Jr., and Thomas Bold, by their attorneys, bring this action against defendants, and allege:

1. Plaintiffs seek declaratory and injunctive relief to require the National Highway Traffic Safety Administration ("NHTSA"), pursuant to its own regulations, to grant petition of plaintiff Center for Auto Safety to open an expedited defect investigation to determine whether to order a safety recall of certain Ford Motor Company vehicles (Ford, Mercury and Lincoln) 1966 through early 1980 ("the affected Ford vehicles"). The affected Ford vehicles contain a safety-related defect within the meaning of the National Traffic and Motor Vehicle Safety Act in that they are equipped with automatic transmissions which can fail to engage or hold in Park and then shift into Reverse gear, thereby resulting in sudden and unexpected vehicle movement. This sudden vehicle movement has resulted in at least 207 deaths and thousands of injuries, a death and injury toll far greater than that of any vehicle defect subject to safety recall in the history of the National Traffic and Motor Vehicle Safety Act, and will lead to many more deaths and injuries over the coming months and years while the affected Ford vehicles remain in use. The petition was wrongfully denied on July 12, 1985.

Jurisdiction and Venue

2. This action arises under the National Traffic and Motor Vehicle Safety Act ("Safety Act"), 15 U.S.C. §§ 1381 et seq., as amended, NHTSA's regulations thereunder 49 C.F.R. Part 552,

and the Administrative Procedure Act, 5 U.S.C. §§ 701-706; and Public Law No. 99-80, 99th Congress, 1st Session, August 5, 1985. This court has jurisdiction over this action and venue is proper pursuant to 28 U.S.C. §§ 1331, 1337, 1391(e).

Parties

3. Plaintiff, Center for Auto Safety ("the Center"), is a non-profit organization with over 9,000 members throughout the United States, and is incorporated under the laws of the District of Columbia where it has its principal place of business. The Center is dedicated to reducing the number of deaths and injuries on our Nation's highways. The Center's members include owners of the affected Ford vehicles who are threatened with the continuing and increased risks of death, injury and economic loss and expense due to the hazards of the safety-related defect presented by these vehicles when they suddenly and unexpectedly move, and the failure of NHSTA to take remedial action with respect to this defect as provided in the Safety Act and regulations promulgated thereunder. In addition, the Center has numerous members who are pedestrians, all of whom are subjected to similar risks from the inadvertent movement of the affected Ford vehicles and the failure of NHTSA to take remedial action. On behalf of its members, the Center has been active in urging the defendants to investigate and take appropriate action regarding this matter since 1977. The relief requested herein will benefit the individual plaintiffs, members of the Center, and the public by requiring NHTSA to conduct the full investigation contemplated by the Safe-

ty Act and regulations of the safety-related defect presented by the affected Ford vehicles, to examine appropriate means of remedying the same and, ultimately, to take such action under the Safety Act, including ordering a safety recall and repair of the affected Ford vehicles, at the expense of the Ford Motor Company, as is warranted.

4. Plaintiff Eleanor A. Kingsland, who resides in West Brookfield, Massachusetts, owns a 1979 Ford Mercury Zephyr equipped with an automatic transmission of the type included within the petition of The Center for Auto Safety. This plaintiff would benefit from the requested relief as any agency action, including a recall, would include this 1979 model year vehicle.

5. Plaintiff A. C. Campbell, Jr., who resides in Fulshear, Texas, is the owner of a 1978 Lincoln Town Car, a 1978 LTD Wagon, a 1978 LTD Sedan, two 1979 LTD II's, and a 1978 Ranchero. All of the vehicles have automatic transmissions of the type included within the petition of the Center for Auto Safety. This plaintiff would benefit from the requested relief as agency action, including a recall would include the vehicles he owns.

6. Plaintiff Thomas Bold, who resides in Burke, Virginia, is a pedestrian. This plaintiff would benefit from the requested relief as agency action, including a recall, would reduce the risk to pedestrian safety from the inadvertent movement of the affected Ford vehicles.

7. Defendant Elizabeth Dole is the Secretary of the United States Department of Transportation and is charged with responsibility to administer the Safety Act.

8. Defendant Diane Steed is the Administrator of the National Highway Traffic Safety Administration. She has been delegated the responsibility to administer the Safety Act. 49 C.F.R. § 1.50.

Matter in Controversy

9. In October 1977 NHTSA opened a defect investigation into the failure of automatic transmissions on 1970 through 1979 Ford, Mercury, and Lincoln vehicles to hold or engage in Park. This investigation resulted on June 9, 1980 in an initial determination by NHTSA that a safety-related defect existed in about 26 million 1970-79 model years Ford, Lincoln, and Mercury vehicles equipped with certain automatic transmissions. Such vehicles are included within the affected Ford vehicles which are the subject of plaintiff's petition.

10. Subsequent to June 9, 1980, NHTSA conducted statutory hearings pursuant to 15 U.S.C. § 1412 at which Ford Motor Company ("Ford") and other interested parties were offered the opportunity of presenting data, views and arguments to establish that the alleged defect did not affect motor vehicle safety. Following the conclusion of this hearing, the Administrator of NHTSA on October 3, 1980 concluded that a final determination that a safety-related defect existed in approximately 10 million of the subject Ford, Lincoln, and Mercury vehicles should be issued and they should be recalled for appropriate repair at the manufacturer's cost and expense according to law. This recommenda-

tion was duly transmitted to the Acting Secretary of Transportation.

11. The Acting Secretary did not approve or disapprove the Administrator's recommendation that a final defect and recall order be issued. Instead, on December 30, 1980 he reached a unique settlement agreement with Ford, under which there would be no repair of the vehicles, Ford would send only notification letters and adhesive labels to owners of the affected vehicles, and NHTSA would be required to drop the defect proceeding. The Acting Secretary justified the settlement on the basis that . . . "this action [sending of notification letter and label] would be likely to reduce significantly the incidence of accident, death and injury resulting from unexpected rearward vehicle movement after the driver has attempted to shift the gear selector lever to "P" (Park) and would fulfill the requirements of the [Safety Act]."

12. The settlement agreement with Ford reserved the right of NHTSA to ". . . take whatever action may be required under the statute and warranted by the development of its knowledge in this matter based upon additional facts." Further, Ford agreed that if Ford "should develop such facts . . . Ford will immediately bring them to the agency's attention and that Ford will take whatever remedial action those facts require under the Safety Act."

13. Notwithstanding the settlement agreement reached with Ford in December 1980, and the mailing of notification letters

and labels pursuant thereto, since then data submitted with the petition and in the possession of NHTSA shows at least 80 additional people have been reported killed in accidents associated with the malfunctioning of the automatic transmissions in the affected Ford vehicles and the overall fatality rate is rising. In addition, this data showed that at least 1,100 injuries and 2,400 accidents since December 1980 have been reported associated with the failure of these automatic transmissions to engage or hold in Park. The ineffectiveness of the label as a remedy for this defect is clear.

14. Approximately 13.9 million of the affected Ford vehicles are still on the road creating serious risks of death and injuries to motorists and pedestrians, and it is imperative that NHTSA act without delay.

15. On March 6, 1985, pursuant to 15 U.S.C. § 1410a and NHSTA's applicable regulations, plaintiff Center for Auto Safety and numerous other interested parties petitioned NHTSA to initiate an expedited defect investigation into the failure of automatic transmissions on 1966 through early 1980 Ford, Mercury, and Lincoln vehicles to hold or engage in Park. A copy of the petition is attached hereto, and made a part hereof as Appendix A.

16. On July 12, 1985, NHTSA denied the petition. A copy of NHTSA's formal denial is attached hereto, and made a part hereof as Appendix B.

FIRST CAUSE OF ACTION

17. Repeat and reallege paragraphs 1 through 17 of this complaint.

18. NHTSA's denial of the petition was in clear violation of the Safety Act and the applicable regulations, 49 C.F.R. Part 552, issued by NHSTA pursuant to its statutory authority.

a. Under 49 C.F.R. § 552.8, NHTSA was required to grant the petition and initiate a defect investigation and proceeding to determine whether the affected Ford vehicles contain a defect which relates to motor vehicle safety when ". . . there is a reasonable possibility that the order requested in the petition will be issued at the conclusion of the appropriate proceeding." (emphasis added).

b. The petition and the other information before NHTSA raised substantial points regarding the presence of a safety-related defect in the Ford vehicles and the ineffectiveness of the label remedy and plainly established the "reasonable possibility" required by the regulations for the commencement of a defect investigation and proceeding.

c. Among other things, the record before the Administrator showed:

(i) since the settlement with Ford in December 1980, the number of deaths, at least 80, reported associated with transmission failures in the affected Ford vehicles is greater than the number associated with any recall in the history of the Safety Act.

(ii) since 1981, after the Ford labels had been mailed, the overall rate of fatalities associated with failures of the automatic transmissions to engage or hold in Park in the affected Ford vehicles continued to climb, reaching the second highest level on record in 1984;

(iii) the rate of fatalities reported for the affected Ford vehicles was and continues to be significantly higher than the rate of the few such transmission failure fatalities reported for the vehicles of other manufacturers and significantly higher than the numbers of fatalities reported for Ford vehicles incorporating certain 1980 transmission design changes;

19. NHTSA's failure to initiate a defect investigation as requested by the petition will lead to a continuing toll of deaths, injuries, and accidents attributable to the affected Ford vehicles and deprive the individual plaintiffs and members of the Center for Auto Safety as well as the public of the benefits of NHTSA's further investigation into the safety-related defects in the automatic transmissions of the affected Ford vehicles, the various remedies available to reduce or eliminate the risk of death, injury, and economic loss and expense presented by such defects and the mandatory recall and repair at the manufacturer's expense provided under the Safety Act.

SECOND CAUSE OF ACTION

20. Repeat and reallege paragraph 1 through 19 of this complaint.

21. NHTSA's denial of the petition was unlawful, arbitrary, capricious, and an abuse of discretion in violation of the Administrative Procedure Act. In denying the petition, among other things, NHTSA:

(i) made a clear error of judgment since the "reasonable possibility" required by NHTSA'S regulations was clearly shown;

(ii) failed to provide a reasoned analysis to support its conclusion that a defect investigation and proceeding should not be commenced because there was no "reasonable possibility" of a recall;

(iii) without justification gave undue and improper weight to unverified and unreliable accident and incident (not including fatality) data submitted by Ford itself, the interested manufacturer.

(iv) without justification failed to give proper weight to the independent verified fatality reports in its possession which plainly showed the very serious safety hazard created by the affected Ford vehicles;

(v) without justification failed to take account of the time lag in its receipt of fatality reports which indicated an even higher likely fatality rate then currently reported;

(vi) made no effort whatever through sampling or otherwise to validate and verify the Ford data upon which it based its denial of the petition;

(vii) made no use of NHTSA's own stored accident and incident data base although it was highly relevant and material;

(viii) failed to give appropriate weight to the compelling evidence that the numbers and rates of fatalities associated with transmission failures in vehicles manufactured by the other major U.S. manufacturers was significantly lower than the numbers and rates of fatalities associated with the affected Ford vehicles;

(ix) failed to give sufficient consideration to and study the effect of design changes made in 1980 by Ford to its automatic transmission systems, in spite of the drastic decline in fatalities and complaints associated with failures of the automatic transmission to engage or hold in Park in post 1980 Ford vehicles containing such design changes; and

(x) committed other errors to be shown at the hearing on this complaint which further demonstrate violations of the Administrative Procedures Act.

Prayer for Relief

WHEREFORE, plaintiffs pray that this Court enter judgment:

(a) setting aside defendant's denial of the petition filed pursuant to 15 U.S.C. § 1410a and declaring that such denial was unlawful, arbitrary, capricious, an abuse of discretion and in violation of NHTSA's regulations,

(b) directing defendants to grant the petition and without delay to initiate an expedited defect investigation according to law into the failure of automatic transmissions on 1966 through 1980 Ford, Mercury and Lincoln vehicles to engage or hold in Park,

(c) granting plaintiffs their costs, disbursements, and a reasonable attorneys' fee according to law; and

(d) granting plaintiffs such other and further relief as may be just and proper.

Respectfully submitted,

Clarence M. Ditlow, III, Esq.
Mary H. Dunlap, Esq.
Evan W. Johnson, Esq.
CENTER FOR AUTO SAFETY
2001 S Street, N.W., Suite 410
Washington, D.C. 20009
(202) 328-7700

Attorneys for Plaintiffs

OF COUNSEL:

Howard A. Heffron, Esq.
11 Dupont Circle, N.W.
Suite 700
Washington, D.C. 20036
(202) 462-6194

Date: September 9, 1985

SUMMONS IN A CIVIL ACTION

United States District Court

FOR THE

District of Columbia

85-2861

CIVIL ACTION FILE NO.

RICHEY, J.

Center for Auto Safety, et al.

Plaintiff

v.

Elizabeth H. Dole, Secretary, U.S. Department of Transportation
and
Diane Steed, Administrator, National Highway Traffic Safety Adminstration

Defendants

SUMMONS

To the above named Defendant : Diane Steed

You are hereby summoned and required to serve upon

Clarence Ditlow Evan Johnson Mary Dunlap

plaintiff's attorneys, whose address is

Center for Auto Safety
2001 S. St. N.W. Suite 410
Washington D.C. 20009

an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

JAMES F. DAVEY
Clerk of Court.

Benjamin
Deputy Clerk.

SEP 0 9 1985

Date: September 9,1985

[Seal of Court]

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

United States District Court
For the District of Columbia
Office of the Clerk
3rd and Constitution Avenue, N.W.
Washington, D. C. 20001

James F. Davey
Clerk

NOTICE OF RIGHT TO CONSENT TO TRIAL BEFORE A UNITED STATES MAGISTRATE

In accordance with the provisions of Title 28, U.S.C. §636(c), you are hereby notified that the United States Magistrates of this District Court, in addition to their other duties, upon the consent of all parties in a civil case, may conduct any or all proceedings in a civil case, including a jury or nonjury trial, and order the entry of a final judgment.

You should be aware that your decision to consent, or not to consent, to the referral of your case to a United States Magistrate must be entirely voluntary. Only if all the parties to the case consent to the reference to a Magistrate will either the Judge or the Magistrate to whom the case has been assigned be informed of your decision.

An appeal from a judgment entered by a Magistrate may be taken directly to the United States Court of Appeals for this judicial circuit in the same manner as an appeal from any other judgment of a District Court. Alternatively, upon consent of all parties, an appeal from a judgment entered by a Magistrate may be taken directly to a District Judge. Cases in which an appeal is taken to a District Judge may be reviewed by the United States Court of Appeals for this judicial circuit only by way of petition for leave to appeal.

James F. Davey
JAMES F. DAVEY
Clerk of the Court

CO-942A
Rev. 7/83

APPENDIX A

BEFORE THE
UNITED STATES DEPARTMENT OF TRANSPORTATION
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

In the Matter of

Ford Automatic Transmissions

PETITION FOR EXPEDITED DEFECT INVESTIGATION

The Center for Auto Safety, Motor Voters, California Public Interest Research Group, New York Public Interest Research Group, Automotive Protection Association, Maryland Public Interest Research Group, Consumer Action of San Francisco, U.S. Public Interest Research Group, Aid to Lemon Owners, Texas Public Interest Research Group, Physicians for Autc Safety, Missouri Public Interest Research Group, Seattle Consumer Action Network, Massachusetts Public Interest Research Group, Public Interest Research Group in Michigan, Connecticut Public Interest Research Group, Rhode Island Public Interest Research Group, USMPIRG (Maine Public Interest Research Group), Colorado Public Interest Research Group, Oregon Student Public Interest Research Group, Robert Taylor and Constance K. Bartholomew respectfully petition the U.S. Department of Transportation [DOT] and the National Highway Traffic Safety Administratio [NHTSA] to initiate an expedited defect investigation into the failure of automatic transmissions on 1966 through early 1980 Ford, Mercury and Lincoln vehicles to hold or engage in Park. This petition is filed under the National Traffic and Motor Vehicle Safety Act of 1966, § 124 *as amended*, 15 U.S.C. § 1410. The petitioners and their safety interests are more fully described in Attachment A.

BEST COPY AVAILABLE

INTRODUCTION

On December 30, 1980, the U.S. Department of Transportation agreed to close the books on the worst auto defect in history by allowing Ford Motor Company to mail warning stickers in lieu of recalling 23 million 1970-1979 Ford and Lincoln-Mercury vehicles whose automatic transmissions fail to hold or engage in Park.[1] The warning label program was agreed to by DOT despite evidence in the investigative record that a warning would be ineffective,[2] and despite the absence of any evidence suggesting that the stickers would work. In his letter to Ford agreeing to the settlement, DOT Acting Secretary Thomas G. Allison wrote,

> We believe this action would be likely to reduce significantly the incidence of accident, death and injury resulting from unexpected rearward movement after the driver has attempted to shift the gear selector lever to "P" (Park) and would fulfill the requirements of the National Traffic and Motor Vehicle Safety Act of 1966, as amended.
>
> * * * *
>
> The National Highway Traffic Safety Administration, however, reserves its right to take whatever action may be required under the statute and warranted by the development of its knowledge in this matter based upon additional facts.[3]

---

[1] When DOT opened its investigation following a request from the Center for Auto Safety in 1977, the 8-year recall statute of limitations for free repair extended back only to 1970 models. However, Ford's defective designs were in use on models with automatic transmission from 1966-early 1980. After the start of 1980 model production Ford instituted design changes which addressed the design defects.

[2] Ford Task Force, Human Factors Study, C8-02, Section III, A 122.

[3] Although the Center challenged the narrow legal issue of whether DOT had the authority to accept a warning label in lieu of a mechanical repair, the United States Court of Appeals for the District of Columbia Circuit held a label was permissible as part of a settlement prior to the formal finding of a defect. The Court did not reach a decision as to whether the label worked in fact. Instead, the Court relied on the agency's promise to monitor the problem and take further action if required.

BEST COPY AVAILABLE

Today, over four years after the Ford settlement agreement, it is clear that the warning stickers have not worked. At lease 104 individuals have died in Ford transmission accidents since December 30, 1980, a death toll far greater than that of any defect subject to a NHTSA investigation during the same time period, and in fact greater than that of any defect subject to a safety recall since the passage of the National Traffic and Motor Vehicle Safety Act. If anything, the death rate from Ford park-to-reverse accidents has gone up since the warning stickers were received by owners.

Moreover, the Department of Transportation and NHTSA have not monitored the Ford transmission problem except sporadically in response to pressure from Congress and public petitioners. Instead, long periods of time have passed with no monitoring efforts or attempts to solicit new accident data from the manufacturer. Even now NHTSA has not employed, with regard to the Ford case, the most simple monitoring device it has used in nearly every significant recall since 1980.

Despite the Department's and NHTSA's failure to monitor the Ford transmission defect, reports of fatal accidents have reached NHTSA in sufficient numbers to establish that no significant decline in fatal accidents has occurred. However, DOT and NHTSA have attempted to escape the implications of the continuing toll of deaths. For four years after the settlement, NHTSA did not investigate Ford transmission fatalities as it had prior to 1981. The agency changed its practices to reduce the number of Ford accidents it counted. Finally, NHTSA adopted a measurement of the change in fatality rates which did not take into account the extensive average time period required for the agency to receive a report of a Ford transmission fatality.

The clearest measure of the defect and Ford's ability to remedy it is found in the dramatic reduction of park-to-reverse reports on Ford and Lincoln-Mercury vehicles built after Ford implemented its design changes after the start of 1980 model year production. Since the design changes were instituted, complaints on the later design Fords failing to hold or engage in park have fallen to one-twentieth of their former level.[4]

The cost in human pain and suffering from the government's inaction has been enormous. The record of death and injury since December 30, 1980, shows clearly that so long as these vehicles continue in operation with the defect unrepaired, they will continue to pose an unreasonable safety risk. The government's policy of waiting for all the defective Fords to age and be retired from service is simply unacceptable.

THE DEFECT AND ITS VICTIMS

The defect is deadly simple -- these Ford transmissions fail to hold or engage in park when the driver shifts into park. Whether the engine is turned off or on, the transmission subsequently slips in to reverse and either rolls away down a slope or moves away under its own power. The defect is particularly lethal because it strikes motorists when they are most unaware -- unloading groceries, opening or closing a garage door or gate, getting in or out of the car, picking up the mail or the newspaper, helping a stranded motorist, and waiting in a parked car. Consumers are not alert to the dangers of the car and have virtually no chance at all when their Ford malevolently turns on them.

Based on the Center's 15 years of experience in auto safety defects, automatic transmissions in 23 million Fords made from 1966 through early 1980 contain the most serious defect ever recorded by the Department of Transportation. At least 289 people have been killed when these automatic transmission failed to hold or engage in park. The vast majorit of the victims are the old and the very young, those least able to protect themselves. They simply are not quick enough to scramble out of the way of these killer Fords when they jump from park to reverse. Shockingly 35 of the victims were children 8 years old or less, with 11 being 1 year old or less, and the youngest a mere 2 months old. One hundred

---

[4] Based on comparison of all Ford park-to-reverse reports for 1981-83 and 1977-79 models received by NHTSA from 1-1-81 through 9-20-83.

BEST COPY AVAILABLE

twenty-two of the victims were 60 years or older, with the oldest being 98. (The following table shows the age distribution of the 25 victims where age was determined.)

Age (years)	Number of Victims	Percentage Of Total
0 - 9	35	13.6
10 - 19	1	0.3
20 - 29	8	3.1
30 - 39	22	8.5
40 - 49	21	8.2
50 - 59	47	18.3
60 - 69	61	23.8
70 - 79	45	17.5
80 - 89	15	5.8
90 - 99	1	0.3

Although the cold statistics of 289 fatalities, 3800 injuries and 12,000 accidents are overwhelming, the real horror of this defect can only be found in the details of individual accidents, some of the most horrible imaginable. The following are but a few examples of the continuing tragedies which have occurred after the Ford owner notification program was completed:

- Martha Max, 71, of Skokie IL, was run over 7 times by her 1976 Ford LTD, which slipped into reverse after she got out to check on a noise in the back of the car. Running backwards in a tight circle, the Ford ran over Mrs. Max repeatedly, its open door smacking her head. A passing motorist, unable to rescue Mrs. Max any other way, drove his van into the Ford. Despite her serious injuries, Mrs. Max recovered sufficiently after the accident to leave the hospital.

The accident occured in August 1983. No Ford warning label was affixed to the car.

* Thomas Bold, 67, of Charleston SC, was sitting on a park bench waiting for a bus, when a 1976 Ford LTD slipped into reverse and came downhill, striking Mr. Bold and crushing him against a building.

  The accident occurred February 24, 1983. Ford's owner notification program was of no help to Mr. Bold, one of dozens of pedestrians killed by the park-to-reverse defect.

* April Grohusky of Kansas City KS, died two weeks before her sixth birthday when she was crushed to death by a Ford truck while she ran to kiss her father good-bye. A 1977 Ford Pick-up was being worked on in the service shop of the Ford dealership where April's father worked. It slipped into reverse and crushed April against the back of her family's car while her parents looked on.

  The accident happened February 5, 1982. Ford's dealers were never required to participate in the Ford warning program.

* Nicky Walding, 56, of Lafayette County AR, was unloading hay from the bed of his 1970 Ford Ranger pick-up on Christmas Eve, 1981, when the truck slipped into reverse and pinned him against a tree. Relatives found him in the remote pasture 16 hours later, on Christmas Day. His right leg, caught against the truck's hot exhaust pipe, was burned off; but because he never lost consciousness through the ordeal, Mr. Walding survived.

  The original owner of the truck, Mr. Walding had never received a warning label from Ford. When Ford officials inspected the truck at a Ford dealership, it slipped into reverse and crashed into a wall.

* Michael Kretzer, 24, of St. Joseph MO, was run down while he walked with his parents to a local softball game. While they walked through a grassy parking area, a 1979 Ford F250 pick-up which had been parked with the engine off, slipped out of Park. It rolled down an incline, knocking Michael down, and continued to roll back and forth over his head and body a total of three times before his father and several other people managed to stop the truck.

Michael Kretzer's fatal accident occurred July 11, 1981. The truck's commercial owner never received a warning label from Ford.

- On October 25, 1984, Mrs. Hilda Sanders, an 84-year-old widow from Drexel Hills, PA, was walking from her bank when a runaway 1978 Lincoln Continental struck her from behind. The Lincoln had slipped into reverse after being left running in a parking lot. It dragged Mrs. Sanders across 62 feet of pavement before crashing into a concrete planter, killing the Philadelphia area resident.

- Louise LaBelle, 55, died in a February 11, 1985, Ford park-to-reverse accident involving a 1978 Ford Thunderbird. In familiar Ford transmission fatal accident scenario, Mrs. LaBell was struck by her car after it slipped from park to reverse with the engine running, while she was outside the car getting mail. The accident occurred in Waller, near Houston, TX.

FORD TRANSMISSIONSMEET LEGAL DEFINITION OF DEFECT

Section 152 of the Motor Vehicle Safety Act which authorizes recalls, requires the showing of a "defect which . . . relates to motor vehicle safety" as "the performance of motor vehicles or motor vehicle equipment in such a manner that the public is protected against the unreasonable risk of accidents occurring as a result of the design, construction or performance of motor vehicles . . ." 15 U.S.C. § 1391(1). [Emphasis added.] "Defect" is defined to include "any defect in performance, construction, components, or materials in motor vehicles or motor vehicle equipment." Id.

In the Kelsey-Hayes Wheel case (United States v. General Motors, 518 F.2d 420 (D.C. Cir. 1975)), the court held that a significant number of failures in normal use provided a sufficient basis for recall without a determination of the precise cause of the failures. Likewise, the NHTSA issued a recall of the Firestone 500 Steel-Belted Radials, notwithstanding Firestone's assertion that safety-related disablements in and of themselves do not constitute a performance defect without a further definition of the defect. Again, the NHTSA based its recall on the relatively high incidence of failures causing hundreds of accidents, injuries, and fatalities.

In the case of transmissions which are designed to function without replacement for the lifetime of the vehicle, NHTSA need only show a significant number of failures "without making any showing of cause." 518 F.2d 427. The incredibly high level of Ford transmission failures, accidents, deaths and injuries more than satisfies the standard set in the Kelsey-Hayes Wheel case. Moreover, NHTSA specifically identified the failure mode in the closed investigation C8-02.[5]

FORD TRANSMISSION DEFECT THE BIGGEST KILLER

In terms of the taking of human life, no auto defect on record even approaches the Ford transmission defect. This was true at the time of the NHTSA investigation, and remains true today. Since December 30, 1980, no defect investigated by NHTSA has been associated with as many fatalities as the 104 deaths reported in that time period for Ford transmissions, as shown in the table below.

Defect	# of Deaths Occurring During 1981-Present
Ford Park-To-Reverse	104
GM X-Car Brake Lock-Up	22
GM A & J Car Brake Lock-Up	7
GM Sudden Acceleration	35
Ford Mustang Brake Lock-Up	4
GM A, B, & C Body Rear Axles (3 separate investigations)	1
GM X-Car Power Brake Assist	2

---

[5] Memorandum 10-3-80 from NHTSA Administrator Joan Claybrook to DOT Secretary Neil Goldschmidt: "the agency can prove the defect alternativel by showing a defect in performance. . . or by showing that the transmissions contain a defect in design." Design defect in C-3, C-4 & FMX transmission described as the dependence solely on the column insert plate and transmission linkage to hold the internal transmission componer in Park. Design defect in C-6 and JATCO transmissions described as the tendency of the internal park mechanism to bind as the gearshift lever is moved from reverse to park, creating false sensation that park engagement has been achieved.

Furthermore, just the death total from Ford transmission accidents in the period since the Ford stickers were received by owners, from May 1981 to present, is more than twice the reported number of fatalities for any defect recall under the National Traffic and Motor Vehicle Safety Act. The leading killer among all NHTSA recalls to date is Firestone 500 radial tires, to which NHTSA attributes 41 deaths.[6]

THE DEFECT IS IDENTIFIED BY FORD

Although Ford Motor Company blames adverse publicity for the defect and the large number of deaths and accidents attributed to it, in fact Ford was aware of this defect and consumer complaints thereon in the early 1970's, some six years before any action by NHTSA or the Center. For example, on December 8, 1971, D.R. Dixon, Principal Engineer of Ford's Chassis Safety Engineering Department wrote:[7]

> The purpose of this letter is to alert you to the increasing number of customer complaint letters pertaining to the transmission control operation and recommend consideration of a design revision. The primary mode of an alleged performance problem occurs when the customer leaves the vehicle with the engine running, thinking he has moved the shift lever into "park" position, and the transmission subsequently engages in reverse. We are now receiving approximately six letters per month of this type. (Emphasis added.)

In an earlier June 30, 1971, memorandum, Mr. Dixon succinctly described the problem:[8]

> Current Chassis shift lever detent design permits transmission lever placement on a "land" between a positive park position and reverse position with the possibility of vehicle vibration moving the lever from park to reverse in an unattended vehicle.
>
> Present customer usage patterns indicate that this condition of careless shift lever actuation is occurring frequently in the field with actual high accident incidence. (Emphasis added.)

---

[6] Phone interview by Stu Samuels, WTAE-TV Pittsburgh, with NHTSA 2-85.

[7] See Attachment B.

[8] See Attachment C.

On November 28, 1972, B. Stapleton of Ford's Transmission Division in a memo aptly entitled, "Automatic Transmission 'Jumping Out of Park"," pointed out the defect applied to all Ford's car lines as follows:[9]

> The Critical Product Problem Committee has been investigating claims of automatic transmissions jumping out of park. The investigation to date has shown all three transmissions (C6, C4, FMX) are involved and the problem is generally across all car lines and does not take any particular trend as to assembly plant, geographical location, time of year or sex of driver. (Emphasis added.)

Rather than being a figment of anyone's imagination, this defect was widely known within Ford at least six years before the government took action on our request to investigate. Moreover in January of 1972, the Product Development Group of Ford's Chassis Division recommended a program action:

> Redesign column detent plate between park and reverse position to insure the trans(mission) will not jump out of park position when customers do not fully engage present park slot in detent.[10]

Even though this design change would have eliminated an estimated 90% of the park into reverse failures at a cost of only 3 cents per vehicle, Ford refused to adopt it.

THE DEFECT AS CORRECTED BY FORD

Part way through the 1980 model year, Ford made various design changes aimed at improving the "tactile feel" of its automatic transmissions. "These changes are so precise," wrote former NHTSA Administrator Claybrook, "that they indicate an awareness of the cause of the problem, and they correct both of the design errors which we have found." Accident reports confirm this.

In July 27, 1983, testimony before Congress, NHTSA officials stated that since the agreement was reached on December 30, 1980, to send out warning labels on pre-1980 models, the agency had

---

[9] See Attachment D.

[10] See Attachment E.

BEST COPY AVAILABLE

received no reports of fatalities on Fords equipped with redesigned transmissions. To date the Center for Auto Safety is aware of only two park-to-reverse fatalities on Fords equipped with redesigned transmissions, a number which is one-thirtieth the total we would expect at the reporting rate for Fords built prior to the 1980 design changes.

Tragically, the Texas Court of Appeals confirmed in Ford v. Nowak, Infra, that the corrective changes made in 1980 could have been made in 1971. Thus the Court found:

> After reviewing all of the evidence, it is apparent that Ford knew of the dangerous condition but failed to correct it when it was economically and technologically able to do so. This apparently willful disregard of the consumer of such defect over such a lengthy period of time was best illustrated by the testimony of Mr. Thomas Shaw, a Ford engineer, who testified by deposition as follows:
>
> Q: Tell me about this change that you are going to make in the '80 models.
>
> A: Okay. One of the changes that the Company is thinking of making in the 1980 models is a revision to the insert, the gate. They are going to deepen the latch area of the insert post area of the insert.
>
> * * *
>
> Q: Is that a technological innovation that was not available to Ford in 1971?
>
> A: No. That would be technically available to Ford in 1971.
>
> Q: Does the design you just described cost any more?
>
> A: I can't see that it would. I would say, no, that it doesn't cost any more.
>
> When Mr. Shaw was questioned on why the change in 1980 models was not incorporated in 1972, he replied, "because I did not have the job then. I am the guy that thought of it. I am the guy that recommended it be done, and I am the person that made sure it was done."

Another critical change was the addition of a bellcrank to Ford light trucks and vans in 1980. The bellcrank in vehicle linkages serves to insulate the transmission's inner control lever from the effects of engine roll and vibration. Present in competitor trucks and in Ford passenger cars during the 1970's the bellcrank was not used in Ford light trucks and vans with single rod linkages prior to 1980, and was identified by NHTSA at that time as contributing to the higher rate of park system failures in those vehicles. Since 1980, these older trucks and vans have remained the biggest killers among all the defective Fords, accounting for 40 of the 104 deaths after December 30, 1980.

THE WARNING LABELS COULD NOT AND DID NOT WORK

In an October 16, 1981, memorandum to former NHTSA Administrator Raymond Peck, former NHTSA Associate Administrator for Enforcement Lynn Bradford noted that while Ford estimated that 88 percent of its warning label letters were successfully delivered,

> Ford conducted no evaluation of the effectiveness of the program, concluding "it takes no elaborate study to reach the self evident conclusion that increased driver awareness of the common sense precautions spelled out in the owner reminder label will reduce the possibility of owners experiencing unexpected vehicle movement incidents."

But Ford's conclusion was more self-serving than self-evident, and was not shared at the time by the top Ford engineer on the Park-To-Reverse problem.

At the August 1980 NHTSA defect hearing on Ford transmission, the primary expert utilitized by Ford's counsel, former Secretary of Transportation William Coleman, was engineer Lee Carr whose testimony takes up 11 pages of the official transcript. Yet in a sworn deposition given as an expert for Ford in Harmon v. Ford, Mr. Carr totally disowned the warning label as follows:[11]

> Q: I take it that your answer would be identical to a warning worded such as the warning sticker that was disseminated by Ford as a result of the agreement with NHTSA, correct?
>
> A: My opinion would be that such a label would not be effective, but it is my opinion that that label is not a warning label and it was never intended to be a warning label.

---

[11] See Attachment F.

> Q: Are you familiar with the Ford document...which says in part, "It takes no elaborate study to reach the self-evident conclusion that increased driver awareness of the commonsense precautions spelled out in the owner reminder label will reduce the possibility of owners experience unexpected vehicle movement incidences." Are you familiar with that, the wording of that letter?
>
> A: Yes, I am.
>
> Q: You disagree with that conclusion or statement?
>
> A: Yes.... It is my opinion that there is no foundation for that statement, and it is my opinion that that label would have no effect on driver behavior. (Emphasis added.)

In fact, Ford had rejected instituting a warning based on earlier studies which were a part of the NHTSA C8-02 investigative record.

In 1979 Ford Motor Company undertook considerable efforts to analyze the role of "human factors" in pursuing a resolution for its vehicles' Park-to-Reverse propensity, and concluded that several types of warnings - including several devices considerably more noticeable than the labels ultimately sent -- would be ineffective because:[12]

> Past history indicates that drivers tend to ignore subtle warning signals and disable aggressive warning signals. Drivers currently ignore visual cues a majority of the time, as noted in actual driver observation experiments.

The record 104 deaths since December 30, 1980, show that Carr was right. Of those 104 deaths, 91 occurred after the date NHTSA has said all owners should have received warning labels.[13] The many faults of the warning label program are sadly summarized in the fatality of 66-year-old Evelyn Arrington of Rochester, N.Y. Prior to her fatal accident, Mrs. Arrington had complained about the tendency of the transmission on her 1968 Ford to fail to hold in park and had taken the car to the local Ford dealer to have it repaired. Relying on Ford Motor Company's instructions that there was no defect in the transmission, the dealer installed the warning label and sent Mrs. Arrington on her way to death. On August 21, 1981, she was killed when her Ford failed to hold in park and crushed her against the apartment house wall.

---

[12] Ford Task Force, Human Factors Study, C8-02, Section III, A 122.

[13] NHSTA has stated that all Ford labels should have been received by owners no later than June 8, 1981. Diane Steed to Timothy Wirth, 7-26-83.

The Ford park-to-reverse defect continues to strike mainly the very old or very young as is sharply brought out among the 104 who have died since December 30, 1980. Seventy-two have been age 50 or older, or younger than 7. Among the deaths of small children in such accidents is that of six-year-old April Grohusky in Kansas City, Kansas, crushed between her parents' car and a Ford truck as she ran to kiss her father good-bye.

FORD "ENGINE OFF" DEATHS BELIE STICKER'S SAFETY MESSAGE

One of the clearest examples of the failure of the warning labels is that at least 32 Ford transmission deaths have occurred when the engine was turned off as instructed by the label.[14] Administrator Steed herself erroneously testified before Senator John Danforth, Chairman, Senate Commerce, Science and Transportation Committee, on February 21, 1985, that

> there is no problem [with Ford transmissions] if people just shut off their cars.

---

[14] Unpowered rollaways will not always be prevented by taking the additional step of setting the parking brake. Federal standards are more lenient for parking brakes on automatics since the Park feature is expected to hold. Thus the brake may not by itself hold the car on a steep grade. Further, owners may neglect brake maintenance because they do not expect their cars to slip out of Park. Finally Ford itself has weakened the warning label instructions by advising owners who inquired about the sticker in 1981 and whose cars were equipped with automatic brake release that merely engaging the transmission in Park will secure the vehicle.

FAILURE OF THE NHTSA TO ACT SINCE 1980

When DOT accepted the Ford warning label settlement on December 30, 1980, Acting DOT Secretary Thomas G. Allison conditioned the settleme on effectiveness of the label and Ford's reporting thereon. DOT's specif conditions were:

> The National Highway Traffic Safety Administration, however, reserves its right to take whatever action may be required under the statute and warranted by the development of its knowledge in this matter based upon additional facts. Furthermore, if Ford should develop such facts, we fully expect that Ford will immediately bring them to the agency's attention and that Ford would take whatever remedial action those facts require under the Safety Act.

In an interview with the New York Times, former Secretary Goldschmidt elaborated:

> The agency had a good case, but I personally believed the sticker program would generate more information for us to determine if a recall was necessary. I perceived it as a situation deserving continuing oversight, a program that should be watched very carefully.

The twin elements in the agreement of monitoring and further action were crucial to an unsuccessful court challenge to the sticker recall brought by the Center for Auto Safety and four other consumer groups. In ruling that the sticker was an acceptable remedy in a settlement case rather than the statutory remedy of a repair required after a final defect determination, the Court relied on the agency's promise of further action. Specifically, the Court found:

> Moreover as noted in Secretary Allison's letter, the Department continues to monitor the Ford transmission problem and may take additional action if required.

AVOIDING DEATH REPORTS: NHTSA'S FAILURE TO MONITOR

Since the close of NHTSA's investigation into Ford transmissions, the agency has repeatedly claimed that deaths from the defect declined after the issuance of the Ford warning stickers. However, changes in NHTSA practices and procedures starting in 1981 have kept the agency's count of Ford transmission fatalities artificially low. In addition, NHTSA's failure to adequately monitor the transmission defect since 1981 has prevented it from receiving timely reports of accidents which

Ford Motor Company had knowledge of but did not voluntarily submit to the agency.

After 1980, NHTSA ceased its former practice of investigating every reported Ford transmission fatality and in fact conducted no investigatio until 1984. After that time the agency limited its investigations to some but not all new death reports; NHTSA refused to investigate deaths reported earlier, including those the agency had decided not to count as Ford transmission-related deaths due to "insufficient detail."[15] Furthermore, NHTSA began to exclude fatality reports involving shifts from Park to Drive after 1980, though such death reports were counted by the agency during its investigationn C8-02.

NHTSA has not voluntarily monitored the Ford defect since 1980, but instead has only felt compelled to ask Ford Motor Company for acciden reports when spurred into action by threats of oversight by Congress or by public petitioners. As a result, NHTSA has allowed long periods of time to elapse without sending information requests to Ford, and thus has not had timely access to fatality data from the principal source of such reports, Ford Motor Company.

DespiteNHTSA's pledge to Congress in 1983 to expand its efforts to warn the public, the agency's only original effort in that regard has been a fluff public service announcement which praises the transmission as a labor-saving device but does not mention the Ford defect. Consumer advisories issued by NHTSA prior to 1980 served not only to warn owners of possible safety problems but also to encourage consumers to submit failure reports to NHTSA. The agency's failure to similarly communciate with the public after 1980 has no doubt led to fewer accident reports being submitted to NHTSA from the public.

Finally, to date NHTSA has not even taken the simple step of doing a random sampling of owners or "audit" of the settlement's effectiveness, though this is almost always done in the case of major recalls.

---

[15] Diane Steed of NHTSA to Rep. Timothy Wirth, 10-3-83.

DECEIVING CONGRESS & THE PUBLIC ABOUT THE DEATH RATE

In her testimony before Congress on July 27, 1983, NHTSA Administrator Diane Steed announced:

> The average rate of fatalities reported per day was 300% higher before completion of the warning label program than it is today.

At the time, Rep. Bryant asked NHTSA Associated Administrator George Parker, --

> What kind of lag time is there between the time that fatalities occur and they are reported...?

Parker responded:

> That is a good question. There is some lag time. We suppose that there would be some that wouldn't be reported, but it would not significantly change the rate as of the later numbers.

Yet barely three months later, on October 3, 1983, Administrator Steed wrote Rep. Timothy Wirth indicating that NHTSA's official post-1980 "death count" had shot up from 26 to 35 -- an increase of over one-third. Every death which NHTSA added to its count occurred prior to July 27, 1983. In two submissions of new fatality reports by Ford in 1984,[16] the manufacturer reported 16 more deaths which occurred prior to July 27, 1983. Today we know that the number of post-1980 Ford transmission deaths which occurred prior to July 27, 1983, is more than double what Mr. Parker of NHTSA thought it was when he testified before Congress NHTSA is simply failing to take into account the fact, established over the 7½ years that Ford transmission death reports have been recorded by NHTSA, that it often takes years from the date of accident before NHTSA hears of a Ford transmission fatality.

NEW DEATH REPORTS FROM FORD: 20 FATALITY REPORTS RECEIVED IN SIX MONTHS TIME

Following a request from the Center for Auto Safety, NHTSA has recently released new accident submissions made by Ford on Novemeber

---

[16] Ford to NHTSA, 11-9-84; Ford to NHTSA, 4-18-84.

9, 1984. These reports show that within a mere six months since its last report to NHTSA, Ford received reports of 20 Ford transmission fatalities.[17] Among them:

- James D. Justice, 68, of Warren Ohio. A "Meals on Wheels" lunch program driver, Mr. Justice died July 19, 1983, trying to reenter a 1978 Ford Club Wagon that had slipped into reverse. He had left the engine on so that his two elderly passengers could benefit from the air conditioning. Concerned for their safety after the Ford started backward, Mr. Justice tried to climb back in the vehicle but was knocked down by the open door and crushed to death.
- On June 7, 1982, Jewell Gladys Glover, 62, of Stilwell, OK, was hunting for duck eggs with her grandchildren when her 1973 Ford F100 pickup slipped from Park to Drive with the engine running. Mrs. Glover tried to stop but was knocked down and dragged into the duckpond, where she drowned.
- Michael Joseph Sturm, 64, of Bay City, MI died July 25, 1984, when his 1977 Ford LTD slipped into reverse after he parked it to check the mail. Mr. Sturm, who had just retired the previous February as Sports Editor of the Bay City Times, owned a 1973 Ford LTD which had a Ford warning label affixed to it. The 1977 Ford had been purchased used and was previously owned by the mother of a local Ford dealer. It had no sticker in it.

These new fatality reports by Ford were followed by a report the following month of over 200 new accident reports resulting in at least 114 injuries. According to Ford's submission, dated December 6, 1984, 25 of the accidents, resulting in at least 12 injuries, occurred with the engine off.

CONTINUING THREAT TO SAFETY FROM FORD TRANSMISSIONS

Right from the start, the Ford warning labels were apparently not popular among their recipients, owners of defective Fords. The only surveys of display rate known to be done were those included in the

---

[17] After reviewing the supporting materials submitted by Ford, the Center believes 19 of these accidents are attributable to the defect, and that one requires further investigation by NHTSA to determine if it was attributable to the defect.

Center's intial petition to reopen the Ford transmission investigation, in which surveys of over 700 vehicles in four cities found only 7% of the Fords observed had stickers on them. This survey was done at the time the label display rate should have been the highest - right after the completion of the campaign when public attention was at a peak.

The low rate was contributed to by Ford itself. It never required its dealers to put the labels on cars on their lots - perhaps because they were afraid the stigma would reduce sales. Ford admits that more than 2 million owners never got the labels in the mail.

Since then, a significant number of these vehicles have been resold as used vehicles. It goes without saying that owners are not likely to sell a vehicle with a warning label affixed indicating or suggesting there may be a safety problem. In fact, one consumer, Mr. A.C. Campbell of Houston, TX, reports that he has inspected over 600 1970-1980 model Fords displayed for sale at auction by the state of Texas since 1981, and has found only one which contained a Ford sticker.[18]

The Center for Auto Safety continues to receive reports from persons who were owners of record of 1967-early 1980 Ford or Lincoln-Mercury vehicles with automatic transmissions (these are the model years Ford mailed its stickers to) in mid-1981, yet never received a sticker. In the February 24, 1983, fatal accident in which Thomas Bold, 67, was killed by a runaway Ford while he sat on a park bench waiting for a bus, the owner of the vehicle reportedly has given a sworn deposition stating she never received the Ford label though she owned the car at the time of the mailings in 1981. Dolores Guiliano, 52, of Pleasantville, NY, was injured February 7, 1985, in a park-to-reverse accident February 7, 1985, trying to reenter her 1977 Ford Thunderbird after it slipped into reverse. Though she has owned the car since 1978, she never received a Ford sticker.[19] How can the stickers work if they are not on the vast majority of the vehicles?

---

[18] Attachment G.

[19] Attachment H.

BEST COPY AVAILABLE

CONCLUSION

If the Department of Transportation were limited to opening one vehicle safety defect investigation in the past four years, that investigation should have been on the 23 million 1966-80 Fords with automatic transmissions that fail to hold or engage in Park. Despite more deaths from the Ford transmission defect than from any other investigated since 1980, the Department of Transportation has refused to take any action.

Yet the Ford transmission defect meets not only the criteria for opening an investigation but also the ground for a statutory defect notification and recall. The following is but a summary of the overwhelming case against these deadly transmissions:

(1) Since 1980, the Ford transmissions on 1966-80 models have killed far more people -104; injured more individuals-1100; and caused more accidents - 3500, than any other defect.

(2) The mechanical fix employed in the post-1980 Fords has drastically reduced the deaths, accidents and injuries from this defect.

(3) The former DOT officials who settled the previous investigation into these transmissions have pointed out the settlement did not forever close the doors on the defect but called for reopening the investigation if the warning labels failed.

(4) The warning labels have never been put on a significant number of vehicles.

(5) Even where the warning labels have been put on cars, they have failed to prevent accidents.

(6) Ford's own top experts have repudiated the warning labels.

(7) A mechanical defect has been identified which can be remedied.

If this had been any other case but Ford transmissions, NHTSA would have certainly investigated, for there would have been no warning sticker to hide behind. Since 1980, however, each new Ford transmission fatality has torn a bit more from the Ford warning sticker facade, until today DOT's inaction is revealed as a clear dereliction of its safety duties which lets innocent people die.

Already in 1985, three people have died, two of them within days of each other in the same city. More will surely die if DOT does not act. Only a recall would give owners a real and effective fix, which would have meant the difference between life and death for people like Victor L. Bloomer, 59, of Robinson, IL, whose death was among the 20 released by Ford late last year. In a letter sent to Ford on August 9, 1984, the late Mr. Bloomer's wife, Kathryn G. Bloomer, writes:

> I'm sorry it has taken so long to report this accident which occurred in Robinson, Illinois on 2-18-84. We purchased this 1977 Ford Pick-up on 4-5-77. We had no difficulty with this truck until 2-18-84. The truck was left running in Park position while my husband Victor L. Bloomer was down unhooking the chain from the car he had just towed. The truck slipped from Park to Reverse and pinned him between the truck and car bumper, resulting in his death 2 hours later. We did not receive any literature or safety sticker to put on this truck in the past. I am trying to sell the truck now with much difficulty. I am now reporting this truck as faulty. I feel you should be aware of it. Also I would like for you to send me a safety sticker to warn anyone who is driving this truck. Please let me hear from you as soon as possible. I'm still trying to sell the truck.

This is the legacy left behind by the Ford Owner Notification Progr and the years of government apathy about this defect.

The attached list contains the names of all the known victims of the Ford transmission defect since December 30, 1980. It is in their memory, and in the hopes of sparing the lives of future victims, that we petition the National Highway Traffic Safety Administration to open an expedited formal defect investigation into the continuing incidence of accident, injury and death resulting from the failure of a 1966-early 1980 Ford or Lincoln-Mercury vehicle's automatic transmission to hold or engage in Park.

Respectfully submitted,

Clarence M. Ditlow III

Date: March 6, 1985

Dan Howell

Robert Dewey
Robert L. Dewey

FATAL FORD PARK INTO REVERSE
ACCIDENTS SINCE DECEMBER 30, 1980+

Make and Model	Deceased	Age	Location	Date
1. 1977 Mercury Marquis	M. Bossert	75	Shirley NY	Dec. 31, 1980
2. 1974 Ford F100 Pickup	A. Curiel	64	Alice TX (P-D)	Jan. 9, 1981
3. 1975 Mercury Montego	A. Lynch	60	Springfield MA	January 1981
4. 1973 Lincoln Mark IV	M. Veloz	70	Stinett TX	Feb. 25, 1981
5. 1972 Ford F100 Pickup	C. Alexander	63	Tallahassee FL	Mar. 6, 1981
6. 1967 Ford LTD	C. Bangs	59	Ft. Lauderdale FL	Mar. 6, 1981
7. 1978 Ford Pickup	N. Busche	54	St. Louis MO	Mar. 18, 1981
8. 1974 Ford	D. Lewitz	72	Menominee MI	Mar. 18, 1981
*9. 1973 Ford Maverick	Pederson	?	Florida	Mar. 26, 1981
10. 1978 Ford SW	C. Jones	33	Philadelphia PA	Mar. 5, 1981
11. 1980 Ford F250 Pickup	R. Kristal	52	Hollister CA	April 2, 1981
12. 1972 Ford	B. Mohrenberg	80	Pingree ND	April 21, 1981
13. 1978 Ford LTD	E. Pettway	62	Old Bridge NJ	May 26, 1981
14. 1979 Ford	J. Dalton	?	Chicago IL	May 31, 1981
15. 1973 Ford Torino	B. Ramirez	36	Littlefield TX	June 9, 1981
16. 1978 Mercury Marquis	M. Poe	69	Boyce LA	June 20, 1981
17. 1977 Ford Pickup	M. Friedline	32	Somerset PA	June 21, 1981
18. 1974 Ford Pickup	D. Ericson	34	Evening Shade AR	July 15, 1981
*19. 1979 Ford Pickup	Kretzer	2	St. Joseph MO	July 1981
*20. 1979 Ford Econoline Van	M. Alcaraz	30	Perth Amboy NJ	Aug. 5, 1981
*21. 1978 Ford Van	L. Wambold	5	Tempe AZ	Aug. 13, 1981
22. 1968 Ford	E. Arrington	66	Rochester NY	Aug. 21, 1981
23. 1971 Ford Torino	D. Sterling	?	Bald Knob AR	Aug. 29, 1981
*24. 1966 Ford Pickup	T. Sisson	3	Simi Valley CA	Sept. 20, 1981
*25. 1969 Ford	D. Stephens	6	Charlotte NC	Sept. 28, 1981

+ Prior to the Bossert fatality, 185 persons had died in Ford park-to-reverse accidents..

* Engine not running at time of accident.

FATAL FORD PARK INTO REVERSE ACCIDENTS SINCE DECEMBER 30, 1980

26.	1971 Lincoln Mark III	R. Jensen	?	Sun City CA	Sept. 1981
27.	1976 Ford F250 Pickup	D. Hyden	4	Urbana IL	Oct. 8, 1981
28.	1978 Ford LTD Police Car	D. Otto	39	Minden IA (P-D)	October 1981
29.	1979 Ford LTD	Rollins	65	Houston TX	November 1981
30.	1979 Ford Pickup	C. Goodlet	57	Allen Park MI	Jan. 12, 1982
31.	1979 Ford Bronco	A. Marrufo	30	Farmington NM	Jan. 15, 1982
32.	1979 Ford Pickup	A. Grohusky	6	Kansas City KS	Feb. 5, 1982
33.	1973 Ford	A. Owens	48	Fort Pierce FL	Feb. 14, 1982
34.	1971 Ford F250 Pickup	T. Platts	52	Priest River ID	Mar. 7, 1982
35.	1976 Mercury Monarch	H. Di Benedetto	69	East Setauket NY	Mar. 9, 1982
36.	1978 Ford Thunderbird	O. Deppe	67	Northwoods MO	Mar. 17, 1982
37.	1973 Ford F100 Pickup	J. Glover	62	Stillwell OK	June 7, 1982
*38.	1974 Ford F100 Pickup	K. Minshull	61	Monte Sereno CA	June 14, 1982
39.	1979 Ford E100 Van	L. Flowers	70	Savannah GA	July 9, 1982
40.	1974 Ford Mustang	R. Stephens	16	Watauga TX	July 31, 1982
41.	1972 Ford F250 Pickup	M. Gilkey	78	Lebanon OR	Aug. 26, 1982
42.	1979 Ford F150 Pickup	J. Flynn	70	Lexington KY	Oct. 2, 1982
43.	1977 Ford Pickup	M. Milburn	77	Othello WA	Oct. 11, 1982
44.	1969 Ford Pickup	J. Kelly	35	Citrus Heights CA	Oct. 12, 1982
45.	1979 Ford Pickup	F. Crane	84	Red Bluff CA	Oct. 13, 1982
46.	1974 Ford Thunderbird	D. Everich	57	Guilford CT	Oct. 18, 1982
47.	1976 Ford LTD	B. Blackmon	51	Austin TX	Oct. 22, 1982
48.	1967 Ford LTD	L. Short	?	Saskatchewan Canada	Oct. 27, 1982
49.	1978 Lincoln	E. Sedwick	66	Libby MT	Nov. 4, 1982
50.	1977 Mercury Monarch	R. McClure	70	Livermore CA	Nov. 23, 1982
51.	1979 Ford LTD	R. Ross	59	Cleveland OH (P-D)	Nov. 30, 1982
52.	1975 Mercury Marquis	S. Lambert	47	Odessa TX (P-D)	Dec. 8, 1982
53.	1974 Ford LTD	C. Litteral	62	Nashville TN	Dec. 9, 1982

---

* Engine not running at time of accident

FATAL FORD PARK INTO REVERSE ACCIDENTS SINCE DECEMBER 30, 1980

54.	1978 Ford Pickup	J. Thompson	66	Fort Worth TX	Dec. 9, 1982
55.	1979 Ford F150 Pickup	W. Bowman	57	Edgemere MD	Dec. 18, 1982
56.	1973 Ford F250 Pickup	N. Sturgill	40	Lassen County CA	Dec. 21, 1982
57.	1979 Ford Econoline Van	M. Mudd	67	Evansville IN	Dec. 22, 1982
*58.	1977 Ford LTD	B. McGill	30	Altamonte Springs FL	Jan. 29, 1983
59.	1976 Ford Gran Torino	S. Hardin	50	Louisville KY	Feb. 8, 1983
60.	1976 Ford LTD	T. Bold	67	Charleston SC	Feb. 24, 1983
61.	1968 Ford Pickup	K. Anderson	2	Aurora MO	March 1983
62.	1975 Ford Torino	M. Lee	71	Haynesville LA	Apr. 15, 1983
63.	1976 Ford F150 Pickup	F. Grant	68	Milfay OK	Apr. 20, 1983
64.	1979 Ford Mustang	R. Dallman	35	Cudahy WI	May 8, 1983
65.	1978 Mercury Marquis	F. Lambeth	81	Odessa TX	May 8, 1983
66.	1977 Mercury	F. Weiss	74	Southfield MI	May 31, 1983
67.	1970 Ford LTD	S. Singleton	80	Dexter MO	June 12, 1983
68.	1977 Mercury Cougar	K. Stepanik	54	Kanora, Ontario	July 10, 1983
69.	1978 Ford Club Wagon	J. Justice	68	Trumbull County OH	July 19, 1983
70.	1971 Ford Torino	L. Strange	?	Darien GA	July 22, 1983
71.	1978 Ford F250 Pickup	R. Franson	56	Chelsea MA	July 25, 1983
72.	1973 Ford Torino	C. Scovell	86	McMinnville OR	Aug. 5, 1983
73.	1978 Ford Granada	T. Arbuckle	?	Wichita Falls TX	Sept. 21, 1983
74.	1979 Ford F100 Pickup	C. Bowie	4	Grants NM (P-D)	Sept. 22, 1983
75.	1978 Ford F250 Pickup	L. Logan	61	Ellis County TX (P-D)	Oct. 11, 1983
76.	1979 Ford LTD SW	R. Carswell	62	Minnetonka MN	Oct. 18, 1983
77.	1976 Mercury Marquis	B. Morgan	56	Philadelphia PA (P-D)	Nov. 14, 1983
78.	1976 Mercury Marquis	A. Buentello	71	Edinburg TX	Nov. 25, 1983
79.	1979 Ford Econoline Van	W. Ports	73	Baltimore MD	Dec. 2, 1983
80.	1972 Ford Pickup	T. Hoover	35	Butler MO	Dec. 8, 1983
*81.	1979 Mercury Capri	M. Morman	49	Gainesville FL	Dec. 13, 1983

---

* Engine not running at time of accident

141

PAGE FOUR

FATAL FORD PARK INTO REVERSE ACCIDENTS SINCE DECEMBER 30, 1980

82.	1976 Ford LTD	F. Zawol	64	Livonia MI	Jan. 6, 1984
83.	1977 Ford F250 Pickup	N. George	3	Buckhannon WV	Jan. 13, 1984
84.	1977 Ford Granada	J. Treyner	70	Beverly Hills FL	Jan. 28, 1984
85.	1977 Ford F100 Pickup	V. Bloomer	59	Robinson IL	Feb. 18, 1984
86.	1973 Ford Pickup	S. Gronek	26	Calimesa CA	Feb. 20, 1984
87.	1979 Ford LTD	V. Roches	71	Greenville SC	Feb. 22, 1984
88.	1979 Ford LTD	P. Roches	7?	Greenville SC	Feb. 22, 1984
89.	1979 Ford Thunderbird	L. Smith	26	Lima OH	Mar. 11, 1984
90.	1970 Lincoln	S. Gilbert	39	Hillman MI (roll in P)	Apr. 1, 1984
91.	1976 Ford Granada	E. Chavez	41	Denver CO	Apr. 25, 1984
92.	1973 Ford	C. Hodson	74	Chickasha OK	Apr. 26, 1984
93.	1973 Ford Maverick	M. Garrison	43	Evensville TN	May 16, 1984
94.	1972 Ford	L. Dunn	78	Sussex Cnty VA	June 6, 1984
*95.	1973 Ford Torino SW	S. Wilison	77	Laurel Hollow NY	June 6, 1984
96.	1970 Ford LTD	E. Jensen	61	Lompoc CA	June 12, 1984
97.	1977 Ford Pickup	D. Johnson	55	Imperial County CA	June 23, 1984
98.	1972 Ford LTD	M. Sturm	64	Arenac County MI	July 25, 1984
99.	1975 Ford Econoline Van	J. Stockwell	38	Northville Twnshp MI	Aug. 4, 1984
100.	1979 Ford F350 Pickup	R. Creel	28	Helena MT	Aug. 24, 1984
101.	1978 Lincoln	H. Sanders	84	Drexel Hill PA	Oct. 25, 1984
102.	1978 Ford LTD	G. Hogan	68	Melbourne FL	Jan. 14, 1985
103.	1978 Ford Thunderbird	L. LaBelle	55	Waller TX	Feb. 11, 1985
104.	197? Ford	K. Boring	24	College Station TX	Feb. 15, 1985

Compiled by: Center for Auto Safety
2001 S St NW #410
Washington DC 20009
February 1985

APPENDIX B

US Department
of Transportation
National Highway
Traffic Safety
Administration

The Administrator

400 Seventh St., S.W.
Washington, D.C. 20590

JUL 12 1985

Clarence M. Ditlow III
Center for Auto Safety
2001 S Street, N.W., Suite 410
Washington, D.C. 20009

Dear Mr. Ditlow:

This is in response to the March 6, 1985, petition of the Center for Auto Safety and others to initiate an expedited defect investigation into the alleged failure of automatic transmissions installed in 1966 to 1980 vehicles manufactured by Ford Motor Company to hold or engage in Park. I have decided to deny the petition because there are not sufficient reasons to expect further investigation of this matter to result in a determination that the vehicles in question contain the alleged defect.

The staff of NHTSA's Office of Defects Investigation has prepared a report of its review of the information relevant to the agency's consideration of the petition. My decision is based on the analysis contained in the Staff Report and on my judgment that no new engineering evidence has been developed and that the additional data concerning incidents, accidents and fatalities tends to support earlier decisions to adopt and abide by the terms of the settlement agreement of December 30, 1980.

As you know, the original NHTSA investigation of this alleged defect, ODI case C8-02, was one of the most intensive inquiries in the agency's history. After the initial determination of June 6, 1980, and the presentations made by Ford and others, Secretary Goldschmidt decided not to make a final determination concerning the alleged defect but instead to negotiate with Ford for a solution that would address the human factors involved in the problem. The settlement agreement provided for a written notification campaign equivalent to the notification prescribed for statutory recall campaigns pursuant to section 153 of the National Traffic and Motor Vehicle Safety Act, 15 U.S.C. 1413. In addition Ford agreed to send warning labels designed to provide continuing reminders to drivers to take the reasonable steps all drivers should take to secure their vehicles from unintended movement when parked. In return, the Department of Transportation agreed to close case C8-02 and not to seek additional remedies against Ford in the absence of new information concerning the matter.

Get it together
SAFETY BELTS SAVE LIVES

In 1981, the Center For Auto Safety and others challenged the factual and legal basis for this settlement in a civil action seeking much the same relief as the present petition seeks. The United States District Court for the District of Columbia granted the government's motion for summary judgment, and the U.S. Court of Appeals for the D.C. Circuit affirmed, upholding the agency's authority to settle defects investigation cases in such circumstances without pursuing all of the elements of the repair, replacement or repurchase remedy provided by section 154 of the Safety Act, 15 U.S.C. 1414, and agreeing with the agency's view that the costs and risks of likely litigation justified the compromise embodied in the settlement. CFAS v. Lewis, 658 F.2d 656, 663 (1982).

In addition to these court decisions, Mr. Ralph Nader petitioned for reopening of the investigation in 1981 which was denied and CFAS requested reconsideration of this decision. The agency denied these earlier petitions because the available evidence indicated that there had been a significant decline in the rate of reported incidents, accidents and fatalities following Ford's notification and warning label campaign.

The present petition, coming four years after Ford's 1981 campaign, offers the advantage of somewhat greater perspective due to the passage of time but it has not provided evidence contradicting the agency's earlier assessments or suggesting that the issues presented by case C8-02 are now any less difficult to resolve. The agency staff has not limited its review and analysis to evidence presented in support of the petition. We requested Ford to provide very substantial new submissions, including updated incident and accident data, which Ford did provide to us. Ford's counsel also provided much information beyond that requested. In addition we requested General Motors Corporation, Chrysler Corporation and American Motors Corporation to provide information concerning their customers' experiences with so-called "park to reverse" incidents in their products as well as any design changes which they might have undertaken since 1980, which they submitted to us. We have reviewed and analyzed all of this information, and other sources of data which might assist us, including NHTSA's Fatal Accident Reporting System which affords an indication of accident rates free of bias due to publicity.

Our review has convinced me that "park-to-reverse" incidents occur among vehicles made by all major manufacturers. Reported incident rates for Ford vehicles have been somewhat higher than those for other manufacturers, and there may be some relationship between these differences in incident rates and the mechanical differences among transmissions noted by NHTSA staff in the course of case C8-02. However, this observation does not go beyond the initial determination of June 1980, which has been vigorously disputed by Ford, and no evidence coming to light during the ensuing four years convinces me that a final defect determination is now warranted or even likely if further investigation were undertaken. The evidence also continues to support the inference that drivers' mispositioning their gear shift levers and failing to take precautions such as turning off their engines and setting their parking brakes have substantially contributed to many if not most incidents. I must also note that the effect of the publicity which has surrounded this matter continues to make judgments concerning the differences in reported incident rates most difficult to make. Indeed the overall trend in the data of reported incidents and accidents has continued downward, and the degree of difference between the rates of reported Ford incidents and reports of other manufacturers is smaller than it appeared in 1980. These trends in the data indicate both the success of the 1981 notification campaign and the effect of reduced publicity as possible explanations.

The present petition emphasizes the effect of Ford's 1980 design changes as a ground for further investigation. While the design changes were apparently intended to improve the function of the park apply systems in Ford vehicles, they do not, in and of themselves, constitute proof of a safety-related defect under the Safety Act. Moreover, when reported incident rates are normalized for vehicle population size, one cannot infer that the 1980 changes have resulted in such reductions of incidents that would compel their adoption as a recall remedy. Our overall review of the data suggests that the 1980 changes have not significantly influenced the rate of reported incidents. It therefore does not appear that a recall campaign in which a mechanical alteration of the vehicles' transmissions would be attempted promises any greater reduction of "park to reverse" incidents in the subject vehicles than has already been accomplished by the notification and warning label campaign undertaken by Ford in 1981 pursuant to the December 1980 settlement agreement.

Because of the absence of new information suggesting the presence of a safety-related defect, and the uncertain prospects for the effectiveness of proposed mechanical remedies, the petition to reopen this investigation is denied. The agency will continue its public information efforts to emphasize the importance of careful driving practices in preventing incidents of inadvertent vehicle movement.

This petition and its file (designated P85-15) are available to the public through the:

National Highway Traffic Safety Administration
Technical Reference Division (NAD-52)
400 Seventh Street, S.W.
Washington, DC 20590

Sincerely,

Diane K. Steed

Diane K. Steed

Attachment B

U.S. Department
of Transportation

National Highway
Traffic Safety
Administration

The Administrator

400 Seventh St., S.W.
Washington, D.C. 20590

JUL 12 1985

Clarence M. Ditlow III
Center for Auto Safety
2001 S Street, N.W., Suite 410
Washington, D.C. 20009

Dear Mr. Ditlow:

This is in response to the March 6, 1985, petition of the Center for Auto Safety and others to initiate an expedited defect investigation into the alleged failure of automatic transmissions installed in 1966 to 1980 vehicles manufactured by Ford Motor Company to hold or engage in Park. I have decided to deny the petition because there are not sufficient reasons to expect further investigation of this matter to result in a determination that the vehicles in question contain the alleged defect.

The staff of NHTSA's Office of Defects Investigation has prepared a report of its review of the information relevant to the agency's consideration of the petition. My decision is based on the analysis contained in the Staff Report and on my judgment that no new engineering evidence has been developed and that the additional data concerning incidents, accidents and fatalities tends to support earlier decisions to adopt and abide by the terms of the settlement agreement of December 30, 1980.

As you know, the original NHTSA investigation of this alleged defect, ODI case C8-02, was one of the most intensive inquiries in the agency's history. After the initial determination of June 6, 1980, and the presentations made by Ford and others, Secretary Goldschmidt decided not to make a final determination concerning the alleged defect but instead to negotiate with Ford for a solution that would address the human factors involved in the problem. The settlement agreement provided for a written notification campaign equivalent to the notification prescribed for statutory recall campaigns pursuant to section 153 of the National Traffic and Motor Vehicle Safety Act, 15 U.S.C. 1413. In addition Ford agreed to send warning labels designed to provide continuing reminders to drivers to take the reasonable steps all drivers should take to secure their vehicles from unintended movement when parked. In return, the Department of Transportation agreed to close case C8-02 and not to seek additional remedies against Ford in the absence of new information concerning the matter.

Get it together!

In 1981, the Center For Auto Safety and others challenged the factual and legal basis for this settlement in a civil action seeking much the same relief as the present petition seeks. The United States District Court for the District of Columbia granted the government's motion for summary judgment, and the U.S. Court of Appeals for the D.C. Circuit affirmed, upholding the agency's authority to settle defects investigation cases in such circumstances without pursuing all of the elements of the repair, replacement or repurchase remedy provided by section 154 of the Safety Act, 15 U.S.C. 1414, and agreeing with the agency's view that the costs and risks of likely litigation justified the compromise embodied in the settlement. CFAS v. Lewis, 658 F.2d 656, 663 (1982).

In addition to these court decisions, Mr. Ralph Nader petitioned for reopening of the investigation in 1981 which was denied and CFAS requested reconsideration of this decision. The agency denied these earlier petitions because the available evidence indicated that there had been a significant decline in the rate of reported incidents, accidents and fatalities following Ford's notification and warning label campaign.

The present petition, coming four years after Ford's 1981 campaign, offers the advantage of somewhat greater perspective due to the passage of time but it has not provided evidence contradicting the agency's earlier assessments or suggesting that the issues presented by case C8-02 are now any less difficult to resolve. The agency staff has not limited its review and analysis to evidence presented in support of the petition. We requested Ford to provide very substantial new submissions, including updated incident and accident data, which Ford did provide to us. Ford's counsel also provided much information beyond that requested. In addition we requested General Motors Corporation, Chrysler Corporation and American Motors Corporation to provide information concerning their customers' experiences with so-called "park to reverse" incidents in their products as well as any design changes which they might have undertaken since 1980, which they submitted to us. We have reviewed and analyzed all of this information, and other sources of data which might assist us, including NHTSA's Fatal Accident Reporting System which affords an indication of accident rates free of bias due to publicity.

Our review has convinced me that "park-to-reverse" incidents occur among vehicles made by all major manufacturers. Reported incident rates for Ford vehicles have been somewhat higher than those for other manufacturers, and there may be some relationship between these differences in incident rates and the mechanical differences among transmissions noted by NHTSA staff in the course of case C8-02. However, this observation does not go beyond the initial determination of June 1980, which has been vigorously disputed by Ford, and no evidence coming to light during the ensuing four years convinces me that a final defect determination is now warranted or even likely if further investigation were undertaken. The evidence also continues to support the inference that drivers' mispositioning their gear shift levers and failing to take precautions such as turning off their engines and setting their parking brakes have substantially contributed to many if not most incidents. I must also note that the effect of the publicity which has surrounded this matter continues to make judgments concerning the differences in reported incident rates most difficult to make. Indeed the overall trend in the data of reported incidents and accidents has continued downward, and the degree of difference between the rates of reported Ford incidents and reports of other manufacturers is smaller than it appeared in 1980. These trends in the data indicate both the success of the 1981 notification campaign and the effect of reduced publicity as possible explanations.

The present petition emphasizes the effect of Ford's 1980 design changes as a ground for further investigation. While the design changes were apparently intended to improve the function of the park apply systems in Ford vehicles, they do not, in and of themselves, constitute proof of a safety-related defect under the Safety Act. Moreover, when reported incident rates are normalized for vehicle population size, one cannot infer that the 1980 changes have resulted in such reductions of incidents that would compel their adoption as a recall remedy. Our overall review of the data suggests that the 1980 changes have not significantly influenced the rate of reported incidents. It therefore does not appear that a recall campaign in which a mechanical alteration of the vehicles' transmissions would be attempted promises any greater reduction of "park to reverse" incidents in the subject vehicles than has already been accomplished by the notification and warning label campaign undertaken by Ford in 1981 pursuant to the December 1980 settlement agreement.

Because of the absence of new information suggesting the presence of a safety-related defect, and the uncertain prospects for the effectiveness of proposed mechanical remedies, the petition to reopen this investigation is denied. The agency will continue its public information efforts to emphasize the importance of careful driving practices in preventing incidents of inadvertent vehicle movement.

This petition and its file (designated P85-15) are available to the public through the:

National Highway Traffic Safety Administration
Technical Reference Division (NAD-52)
400 Seventh Street, S.W.
Washington, DC 20590

Sincerely,

Diane K. Steed

Diane K. Steed

Attachment C

CENTER FOR AUTO SAFETY PETITION
ON FORD TRANSMISSIONS

Table of Contents

I. INTRODUCTION 2

II. BACKGROUND 2

III. THE CFAS PETITION 4

IV. DATA SOURCES 6

V. DISCUSSION 7

  A. Incidents and Accidents 8

    1. Ford Vehicles 8

      a. Ford Supplied Data.. 8
      b. Data Reported by Consumers or Their Representatives.. 14

    2. Non-Ford Vehicles 16

  B. Fatalities 17

    1. Review Procedure 17

    2. NHTSA List of Fatalities 19
      a. Ford Vehicles 19
      b. Non-Ford Vehicles 20

    3. NHTSA "FARS" Files 21

    4. CFAS List of Fatalities 23

  C. Effect of 1980 Transmission Changes 24

    1. Changes Made 24

    2. FARS Data 26

    3. Incident Reports and Rate Data 27

  D. Effect of Publicity.. 28

VI. OBSERVATIONS 30

- 30a

I. INTRODUCTION

On March 6, 1985, the Center for Auto Safety (CFAS), et al, petitioned NHTSA to initiate an expedited defect investigation into the failure of automatic transmissions on 1966 through early 1980 Ford, Mercury, and Lincoln vehicles[1] to hold or engage in Park. This report reviews the substantive information presented in support of and in opposition to the petition and summarizes the results of investigative activity in response to the petition.

II. BACKGROUND

NHTSA conducted an investigation into this matter under the Office of Defects Investigation (ODI) Case No. C8-02 which covered 1970 through 1979 Ford vehicles equipped with C6, C4, C3, FMX, and JATCO automatic transmissions. On June 6, 1980, NHTSA's Deputy Administrator made an initial determination that a safety related defect existed in all of those vehicles. An informal public hearing was held on August 20-22, 1980, in accordance with the requirements of section 152 of the National Traffic and Motor Vehicle Safety Act.

The basic position that Ford Motor Company (Ford) espoused at that hearing remains Ford's position today (P85-15-E1). In summary, Ford argued that:

- Failures can and have happened in all makes of vehicles.
- The apparently higher rate of failure in Ford vehicles is the result of unprecedented publicity by NHTSA that singled out Ford.
- NHTSA statistics are grossly in error because NHTSA overcounted duplicate reports and improperly evaluated reports of alleged Ford transmission failures.
- Most reported failures are the result of driver error such as careless or improper shifting.

On October 3, 1980, the NHTSA Administrator recommended to the Secretary of Transportation that a final determination of safety-related defect be declared. The Administrator recommended a mechanical

---

[1] All of these Ford-manufactured vehicles are referred to herein as "Fords", regardless of their make or model.

- 30a

BEST COPY AVAILABLE

remedy for vehicles equipped with FMX, C-3, and C-4 transmissions but suggested that vehicles with C-6 and JATCO transmissions could be remedied with a warning device. However, the Secretary did not make a final determination of the existence of a safety-related defect. Instead, on December 30, 1980, the Department of Transportation (DOT) and Ford reached a settlement agreement on the matter. Ford agreed to mail notification letters and warning labels to the owners of all vehicles encompassed by the initial defect determination. DOT agreed to terminate the investigation but reserved the right to take further action if warranted by the development of new facts. A news release was issued on December 31, 1980, announcing the agreement. The investigation was formally closed on May 4, 1981, after Ford notified NHTSA that it had completed mailing the notification letters and warning labels.

On March 6, 1981, CFAS filed a lawsuit seeking review of the settlement, claiming that it exceeded DOT's authority under the Safety Act and that it was arbitrary and capricious. The U.S. District Court ruled that the Secretary's decision to settle with Ford was a reasonable exercise of his discretion. On appeal, the U.S. Court of Appeals for the District of Columbia Circuit affirmed the District Court ruling. The Court held that, in the absence of a final determination of defect, the Secretary was authorized to settle a safety defect investigation on the basis of a remedy other than one listed in 15 U.S.C. § 1414(a)(2)(A). The Court also held that the Secretary did not act arbitrarily or abuse his authority in reaching the settlement, because the existence of a defect was not conclusively established, and because, in an enforcement action, the Department would have faced great difficulties in sustaining its burden to prove the existence of a defect since the interaction between driver and vehicle seemed a critical factor in the transmission malfunctions. *Center for Auto Safety* v. *Lewis*, 685 F.2d. 656, 663 (1982). The Court also noted the likelihood that the settlement would result in a reduced number of accidents if drivers followed the instructions on the warning label (*Id.* at 664), and pointed out that no remedy can be absolutely effective, and that even if the vehicles had been recalled, only about half of them would have been repaired. (*Ibid.*)

On June 16, 1981, Mr. Ralph Nader filed a petition to reopen the Ford transmission investigation. On October 17, 1981, NHTSA denied this petition based on the lack of significant new information to warrant overturning the settlement. On February 18, 1982, the CFAS filed a petition for reconsideration of the Nader denial. On June 18, 1982, NHTSA denied the CFAS petition on grounds similar to those it had cited in the Nader denial.

III. THE CFAS PETITION

In support of its 1985 petition, CFAS made the following arguments:

Since 1980, the transmissions on 1966-80 model year Ford vehicles have killed far more people - 104; injured more individuals - 1,100; and caused more accidents - 3,500; than any other defect.[2]

A mechanical defect has been identified which can be remedied. The mechanical fix employed in the post-1980 Fords has drastically reduced the deaths, accidents and injuries from this defect.

The terms of the settlement called for reopening the investigation if the warning labels failed. The warning labels have never been placed on a significant number of affected vehicles. Even where the warning labels have been put on cars, they have failed to prevent accidents. Ford's own top experts have repudiated the warning labels.

The CFAS petition also discussed other aspects of the case, including a description of the problem; the high involvement of victims who are either old or very young; Ford's early awareness of the problem, and the lack of a bellcrank on Ford trucks and vans. All of these subjects were addressed in ODI's 1980 report and will not be discussed in this report.

Finally, CFAS charged that NHTSA has failed to adequately monitor the problem and has deceived the Congress and the public about the death rate. These latter matters are the subject of an ongoing GAO investigation.

---

[2] CFAS has labeled the alleged Ford transmission defect as the "biggest killer" among the defects investigated by NHTSA since 1980. While the number of reported fatalities due to inadvertent movement of 1970-1979 Fords is large in terms of absolute numbers, the vehicle population base in 1980 for the vehicles in question was well over 20 million vehicles. NHTSA has received reports of fatal accidents in other defect investigations involving much smaller vehicle populations, resulting in higher fatality rates than have been alleged in the Ford transmission investigation. In addition, as will be discussed more fully later in this report, it is impossible to arrive at a count of fatalities which can be regarded with certainty as attributable to the alleged defect.

30a

The alleged defect that was the subject of C8-02 and is the subject of CFAS' petition has been defined as a failure of the vehicle to hold or engage in park gear. It is noted that Ford believes it preferable to refer to these type of incidents simply as involving the unexpected movement of driverless vehicles. The term "park to reverse" has also been used to describe the alleged defect, although, strictly speaking, this description is not fully comprehensive. For example, an unpowered forward rollaway of a vehicle may be a relevant failure although the gearshift selector lever may not be in "reverse".

Neither the CFAS petition nor any other source has revealed new technical information that NHTSA has not previously studied and reported on. CFAS' petition presents no technical evidence regarding Ford's 1980 "mechanical fix". Rather, CFAS argues that proof of the success of Ford's 1980 mechanical changes can be seen in the "dramatic" reduction of deaths, accidents, and injuries in the post model year 1980 Ford vehicles. The agency's June 1980 report on transmissions, which we shall not repeat here, discussed the 1980 changes in detail, including all of the technical points subsequently raised by two plaintiffs' expert witnesses who briefed NHTSA representatives on May 31, 1985.[3] This discussion will not be repeated here.

The only "new" information NHTSA has obtained or learned about since the settlement agreement consists of reports of accidents or incidents which were previously unknown to the agency, although the actual date of the occurrence may have preceded the settlement. Accordingly, most of this Report is devoted to analysis of accident and incident data. Although CFAS' petition covers 1966 to early 1980 model year Ford vehicles, we have focused primarily on reports for vehicle model years 1970 through 1979, both because those model years were the subject of C8-02, and to ensure timely response to CFAS' petition. To the extent possible, we have included discussion of the 1966 through 1969 models and the 1980 and later models. Some examination of data regarding 1980 model year and later vehicles is necessary for comparative purposes, in view of CFAS' claim that the 1980 Ford changes effectively corrected the defect. Only limited information is available for the 1966 through 1969 models, which originally were excluded from ODI Case C8-02 because even in 1978 when that investigation began they were beyond the 8-year statute of limitations for mandatory remedy without charge under the Safety Act (15 U.S.C. §1414(a)(4)).

---

[3] Ford has denied that the 1980 changes caused a decrease in the rate of accidents (P85-15-11; P85-15-E1).

- 30a

The premise of the CFAS petition is that the warning letter and label campaign has failed. The report considers effectiveness of the settlement as a whole in terms of the reported rates of incidents, accidents, and fatalities since Case C8-02 was closed. Because of time and resource limitations, it would have been impossible to conduct a meaningful statistical survey about the settlement's effectiveness within the time allotted for ruling on a petition to open a defect investigation. In any event, in ODI's judgment, it was not necessary to conduct such a survey because accident and incident data could serve as a basis for such an evaluation.

We note also that in its attempt to demonstrate that "Ford's own top experts have repudiated the warning labels", CFAS has quoted out of context from the deposition testimony of one former Ford transmission engineer, who stated that, in his opinion,the label would not have any effect on driver behavior, but that the label "is not a warning label and it was never intended to be a warning label." (P85-15-1a, Attachment F, at p. 154) Further into the transcript of the same deposition, however, the same "expert" says, among other unquoted statements, that in his opinion, "increased driver awareness would have an effect on these kinds of incidences, if that the driver were simply aware of what he was doing he would have no trouble putting the car in park or seeing that it was in park or even for that matter, seeing that it wasn't in park.." (Id at p. 155).[4]

IV. DATA SOURCES

NHTSA obtained information to support this petition analysis from the following sources:

- NHTSA consumer complaint data base
- NHTSA "FARS" files for years 1975-1984,
- NHTSA field investigations,
- Consumers and consumer representatives
- Ford Motor Company and its representatives,

---

[4] He also testified that, in his opinion, "there were such (warning) devices already installed and operating on [the driver's] vehicle at the time of the incident, and I further believe if the incident happened as described, [the driver] would have had to disregard all those signals. Therefore it is my opinion that she disregarded the available signals and that she would have disregarded an additional signal or two."(Id at pp. 149-150)

- General Motors Corporation
- Chrysler Corporation, and
- American Motors Corporation.

During the C8-02 investigation, the agency's database of incidents and accidents listed approximately 23,000 reports of subject incidents. The database has been criticized by Ford and its counsel as flawed in concept and misleading because the number of actual complaint vehicles represented only about one-half of the 23,000 incidents, since complainants frequently reported multiple failures. Further, the database does not contain incidents reported since early 1980. ODI has chosen not to rely on the C8-02 database because of these problems and because we have now obtained a comprehensive database listing from Ford. It is noted that during the C8-02 investigation the number of incidents in the database was nearly twice the number of incident reports due to multiple reporting per vehicle.

ODI conducted an exhaustive analysis of available data in responding to the CFAS petition. In addition to a review of data concerning reported fatal accidents (the principal focus of CFAS' March 6 petition), a review was made of all available data concerning reported incidents of failure to engage or hold in park including reports of non-fatal accidents (involving injury, property damage, or both). This was done for Ford vehicles as well as vehicles manufactured by Ford's principal domestic competitors. To obtain these data, ODI requested and received information from the four principal domestic manufacturers. ODI also reviewed its own consumer complaint file for information relevant to this analysis.

V. DISCUSSION

The data concerning non-fatal accidents and incidents, which include many more reported events than the fatality data, are summarized and analyzed below. (Note: The term "incident" refers to any reports of alleged failure to hold or engage in Park gear which may or may not have involved a reported accident.)

A. Incidents and Accidents

1. Ford Vehicles

a. Ford-supplied data

By letters dated May 6, and May 31, 1985, Ford submitted to ODI information regarding relevant incidents (including non-fatal accidents) processed by Ford through March 26, 1985. The information includes a comprehensive listing of some 19,000 incident reports and accidents involving 1966-1984 model vehicles and includes incidents compiled by Ford during and subsequent to the ODI C8-02 investigation. According to Ford, the listing includes reports:

- o received as part of Ford's toll-free Automatic Transmission Hotline complaint solicitation program in 1978,
- o submitted to the NHTSA by Ford during the C8-02 investigation,
- o submitted to NHTSA by Ford following the settlement,
- o received and processed by Ford since Ford's last submission of similar information, and
- o forwarded to Ford by NHTSA.

Table 1 summarizes the number of incident and accident reports received by Ford, by model year of the vehicle involved, but not by the date of the reported event.[5] This Table includes approximately 7,500 reports, supplied by Ford, for which the incident dates are unknown.

---

[5] During a telephone conversation on June 24, 1985, E. L. Richardson of Ford confirmed to the ODI Director that Ford had sent NHTSA information about all accidents, injuries, and incidents that had been reported to Ford and recorded in Ford's database as of March 26, 1985. Ford has also received some reports in 1985 that had not been recorded in Ford's database by March 26, 1985, including some reports of events that occurred in 1985. Regarding the 7,500 incident reports with unknown failure dates, Ford advised ODI that for 1970-1979 model year vehicles, 77 percent of the complaints were received (and thus occurred) before the 12/30/80 settlement date. The remaining 23 percent were received after the settlement date; however, those incidents may not necessarily have occurred after the settlement. The comparable percentages for 1966-1969 model year vehicles are 60 and 40 percent. Twenty-three (23) percent of the 1980-1985 incident reports were received prior to the settlement.

- 300

Table 1 - Incident/Accident Reports for Ford Vehicles Reported to Ford

Vehicle Model Year(s)	Incident Reports	Property Damage Accidents	Injury Accidents
1966-1969	664	248	230
1970-1979	17,525	8,233	4,367
1980[6]	341	168	93
1981-1985	355	157	69
Unknown	554	252	176

Figure 1 on the following page shows the number of incident reports, by year of occurrence, before and after the settlement, and the rate of those incidents per 100,000 vehicles. Figure 2 compares property damage and injury accidents for these vehicles before and after the settlement. These figures show a decrease in both the absolute numbers and the rates of reported events in every year that followed the settlement.

---

[6] The 1980 model year is treated separately in Table 1, and throughout this report, because Ford made changes to the designs of various transmissions on different dates during the course of that model year.

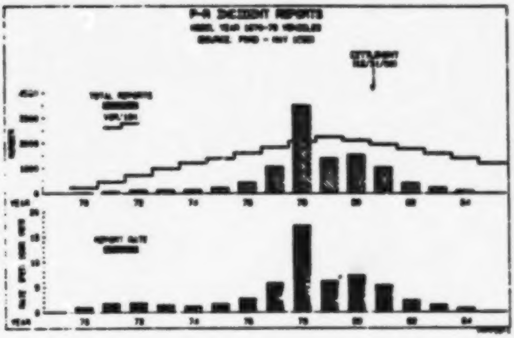


Figure 1

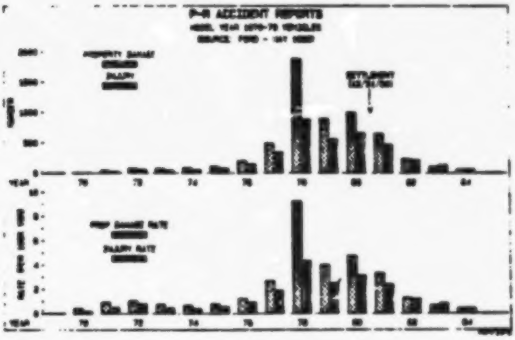


Figure 2

3:a

Table 2 shows the number of incident reports with incident dates since December 31, 1980, for two different vehicle model year groups. The estimated vehicle population is also shown, along with the corresponding incident rate per 100,000 vehicle population. These rates are illustrated in Figure 3.

Table 2 - Incident Reports to Ford
(CY 1981-1984)

	Model Yrs 1970-1979			Model Yrs 1981-1984		
Incident in year	No.	Est. VOR (million)	Rate per 100K veh.	No.	Est. VOR (million)	Rate per 100K veh.
1981	1,038	19.39	5.35	42	1.38	3.04
1982	414	17.66	2.34	82	2.65	3.09
1983	223	15.80	1.41	80	4.13	1.94
1984	108	13.86	0.78	45	6.00	0.75
Unknown	7,111			98		

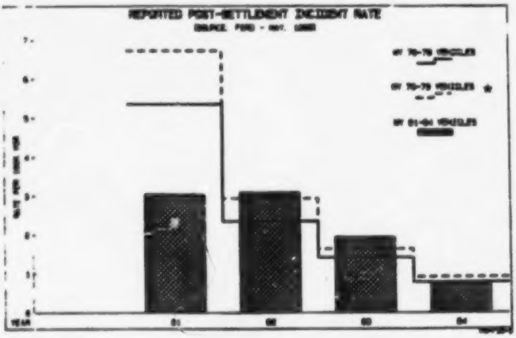


Figure 3

*See page 14 for a discussion of the reasons for this comparison.

- 30a

Tables 3 and 4 (Figures 4 and 5) show similar analyses of the Ford data for which the failure dates are known for reported property damage and injury accidents.

Table 3 - Property Damage Accident Reports to Ford
(CY 1981-1984)

PD Acc. in Year	Model Yrs 1970-1979 No.	Model Yrs 1970-1979 Est. VOR (million)	Model Yrs 1970-1979 Rate per 100K veh.	Model Yrs 1981-1984 No.	Model Yrs 1981-1984 Est. VOR (million)	Model Yrs 1981-1984 Rate per 100K veh.
1981	645	19.39	3.33	17	1.38	1.23
1982	228	17.66	1.29	32	2.65	1.21
1983	102	15.80	0.65	30	4.13	0.73
1984	58	13.86	0.42	22	6.00	0.37
Unknown	2,375			55		

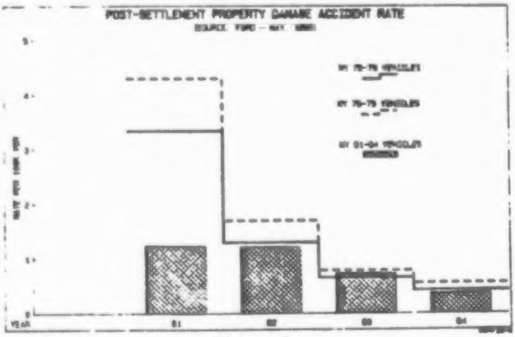


Figure 4

- 30a

Table 4 - Injury Accidents Reports to Ford
(CY 1981-1984)

	Model Yrs 1970-1979			Model Yrs 1981-1984		
Inj. Acc. in Year	No.	Est. VOR (million)	Rate per 100K veh.	No.	Est. VOR (million)	Rate per 100K veh.
1981	465	19.39	2.40	8	1.38	0.58
1982	213	17.66	1.21	12	2.65	0.45
1983	130	15.80	0.82	23	4.13	0.56
1984	58	13.86	0.42	8	6.00	0.13
Unknown	666			18		

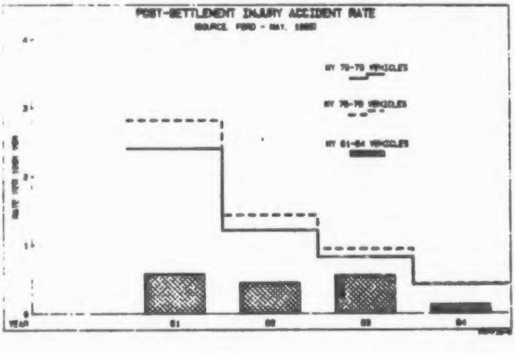


Figure 5

30a

In general, all three of these tables show a decreasing trend in both the absolute numbers and the rates of incident reports and of property damage and injury accident reports during each of the years since the settlement, for both MY 1970-1979 vehicles and MY 1981-1984 vehicles. The tables also show that incidents and accidents continue to be reported for both vehicles equipped with the 1980 changes, as well as for vehicles that were the subject of C8-02 that did not have the changes to their transmissions.

For MY 1970-1979 vehicles covered by the settlement, the tables show a steady decrease, in both numbers and rates, for reports of incidents, injury accidents, and property damage accidents. For MY 1981-1984 vehicles that were outside the settlement, and that were different mechanically from the earlier vehicles, Table 2 shows a slight increase, in both absolute number and rate, for reports of incidents in calendar year 1982. Table 4 shows an increase for reports of injury accidents in calendar year 1983. The reason for these increases is unknown, but ODI notes that they are based on a numerically small sample and do not appear to be statistically significant.

The 7,500 incident reports that occurred on "unknown" dates, as well as the 550 incidents for which Ford reported that the vehicle model year was unknown, are excluded. (The dotted lines shown in Figures 3, 4, and 5 represent the incident and accident rates for 1976-1979 model year vehicles. These model years represent 4 years of production as do the 1981-1984 vehicles and are shown for comparison purposes only. It is noted that the 1976-1979 rates are consistently, though only slightly, higher than the 1970-1979 rates.)

b. Data reported by consumers or their representatives

Since December 31, 1980, consumers and their representatives (including CFAS) have reported to ODI alleged Ford incidents and non-fatal accidents which have occurred since that time. Tables 5, 6 and 7 show a breakdown of these reports, by known model year groups. The numbers shown in the tables are not necessarily additive to the Ford data, since duplicates may exist.

- 30a

BEST CO[illegible] [illegible]ABLE

Table 5 - Incident Reports by Consumers
(CY 1981-1985)

Incident in Year	Model Yrs. 1966-69	Model Yrs. 1970-79	Model Yr. 1980	Model Yrs. 1981-85	Unknown Model Yr.
1981	3	134	8	1	16
1982	4	73	3	9	9
1983	5	75	0	11	10
1984	2	77	5	3	2
1985 to date	2	24	0	4	1
Unknown	15	365	16	21	76

Table 6 - Property Damage Accident Reports
by Consumers (CY 1981-1985)

Incident in Year	Model Yrs. 1966-69	Model Yrs. 1970-79	Model Yr. 1980	Model Yrs. 1981-85	Unknown Model Yr.
1981	2	61	5	1	5
1982	1	26	1	6	0
1983	0	35	0	6	3
1984	0	32	4	1	0
1985 to date	0	10	0	3	0
Unknown	4	97	9	10	17

- 30a

Table 7 - Injury Accident Reports by Consumers
(CY 1981-1985)

Incident in Year	Model Yrs. 1966-69	Model Yrs. 1970-79	Model Yr. 1980	Model Yrs. 1981-85	Unknown Model Yr.
1981	2	64	3	0	9
1982	2	38	1	2	7
1983	3	40	0	4	7
1984	2	24	1	0	2
1985 to date	2	7	0	1	1
Unknown	5	58	3	6	19

These tables show that ODI has received many fewer reports that involve vehicles manufactured after 1980 than it has received for vehicles manufactured before 1980. It is noted, however, that the 1970-1979 group covers a 10 model year period with many more vehicles than the 1980 or 1981-1985 groups. Further, the number of reports to ODI is relatively small compared to reports received by Ford.

2. Non-Ford Vehicles

The following table shows the total number of alleged incidents and non-fatal accidents involving 1970-1979 GM, Chrysler, and AMC vehicles that have occurred since December 31, 1980, reported to ODI or to the vehicle manufacturers:

- 30 a

Table 8 - Alleged Incidents/Non-Fatal Accidents on Non-Ford Vehicles (CY 1981-1985; all sources)

Vehicles	Incident Reports	Property Damage	Injury
GM	118	42	53
Chrysler	50	21	20
AMC	14	10	6

B. Fatalities

The CFAS petition emphasizes fatality data as grounds for the need for a recall, and much of the Congressional (including GAO) oversight of this matter has focused on fatality data. Also, the submissions by Ford's outside counsel have focused on fatality data, especially fatalities involving Ford's competitors. Both because of this emphasis on fatalilties, and because fatality data has characteristics that differ from other bodies of data,[7] ODI has analyzed fatality data separately from incident and non-fatal accident data.

1. Review Procedure

A review panel of three ODI staff engineers examined all available information about every reported "park to reverse" fatal accident in an attempt to make reasonable and consistent judgments that reported events were related to the problem mode. For each reported case, ODI attempted to make a judgment as to whether the accident was definitely related to the subject problem (yes), or was definitely not related (no). Reports for which ODI found insufficient evidence to support either a "yes" or a "no" judgment were categorized as possibly related (possible). Additional field investigations were made to supplement those already completed in those "possible" cases which had the potential of a more clear-cut categorization.

---

[7] Fatality data are on the one hand less biased than incident data, because demonstrably an accident occurred and a person died; but on the other hand, many fatalities that are apparently transmission related are unwitnessed accidents making it difficult to confirm that the accident was in fact transmission related. The database for fatalities is much smaller than the non-fatal accident and incident databases because fatalities are relatively rare events. A small change in the number of fatalities will have a much greater effect on the apparent annual fatality pattern than a small change in the number of incidents or non-fatal accidents. It is accordingly more difficult to extrapolate future trends from fatality data than from non-fatal accident and incident data.

- 302

ODI attempted to be rigorously consistent in its classifications and to apply objective criteria to all of the reported "fatalities". ODI counted as "Yes" all reports of fact patterns that showed a powered reverse or rollaway where there was a basis for an inference that the driver placed or attempted to place the gearshift lever in the "park" position. In the absence of evidence to the contrary, ODI inferred an attempt to place the vehicle in Park, because it is reasonable to expect that most drivers of vehicles with automatic transmissions are trained to, and do, attempt to shift into Park before leaving their vehicles. ODI counted as "No" all reports with fact patterns that suggested that it was unlikely that the driver had attempted to secure the vehicle in "Park".[8]

Because judgment is involved in any such categorization, and because of the special difficulty in categorizing fatal accidents where the victim, who may have been the sole witness, is unavailable, it is impossible to reach an incontrovertible "count" of fatalities. ODI made its judgments on the basis of the best available data and on logical accident reconstruction and assumptions and inferences from those data.[9] Thus, ODI's classification of reported fatalities is not a "count" of fatalities that "were caused by" a failure to engage or

---

[8] For example, ODI considers reports that suggest that the driver exited the vehicle and left the gearshift selector lever in the "drive" position, or that somebody (perhaps the driver, perhaps not) manipulated the gearshift lever into "drive" or "neutral", not to be reasonably probative of a failure to hold or engage in park, and classifies such reports as "no". Also, where the fact pattern suggests that the reported death was not directly caused by the reported accident, ODI classifies the report as "no".

[9] For example, if a vehicle reportedly was found circling in reverse and the reported pre-accident vehicle movement was forward, it is likely that the driver placed or attempted to place the gearshift selector in the park position. Otherwise, one must conclude that the selector moved from the "drive" or the "neutral" position to "reverse". It is more reasonable to conclude that the selector moved after an attempt to place it in the "park" position. ODI would count a reported accident with this fact pattern as a "yes".

- 3ca

BEST COPY AVAILABLE

hold in Park, but rather a classification of accidents for which available evidence reasonably suggest that the accident was or was not caused by failure of a transmission to engage or hold in Park.

ODI's criteria for excluding reported accidents from its count in this categorization differed somewhat from criteria used in ODI's 1980 Phase I report. Reports involving possible mechanical abnormalities in a vehicle's park mechanism, intoxicated drivers, or deaths that occurred long after the accident were not necessarily considered in the current review to be "no's"; judgment was used to evaluate these reports. However, ODI counted all reported accidents in which an unattended child or animal was reportedly in the front seat of the vehicle at the time of the accident as "no's in this "count."

2. NHTSA List of Fatalities

As of June 27, 1985, ODI had received reports of 412 1966-1979 Ford "fatalities," from all sources. On the basis of the above described analysis, ODI classified 207 of those reported fatalities as "Yes," 106 as "No," and 99 as "Possible."

a. Ford Vehicles

Figure 6 shows Ford fatalities reported to NHTSA from any source that involved vehicle model years 1966 through 1979. The charted fatalities are the combined totals of both "yes" and "possible" category failures.

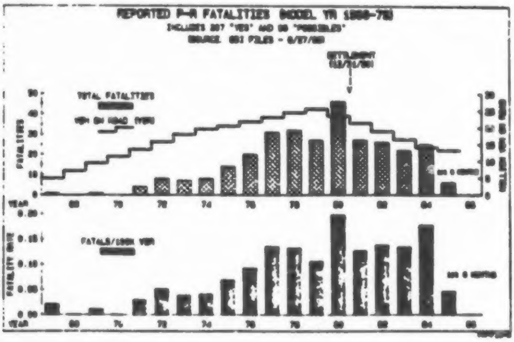


Figure 6

-30a

BEST COPY AVAILABLE

The following table shows reported fatalities ("Y" and "P") involving 1966 and later model year Ford vehicles that have occurred since December 31, 1980. Fatalities for which the model year is not known are not included on this chart.

Table 9 - Reported Fatalities
Occurring on 1966 and Later Ford Vehicles

Vehicle Model Years	Fatalities Since 12/31/80	
	"Y"	"P"
1966-1969	8	5
1970-1979	72	21
1980	2	1
1981-1985	3	1
Unknown	0	0

b. Non-Ford Vehicles

For comparative purposes, ODI also analyzed all fatalities reported to NHTSA from any source that involve 1966 and later GM, Chrysler, and AMC vehicles which have occurred since December 31, 1980. ODI obtained this information from a variety of sources, including its own "Hotline" complaint database, responses to ODI information requests from Ford's three leading domestic competitors, submissions by counsel for Ford of non-Ford accident data, and submissions from CFAS.

ODI used the same methodology described above in section V.B.1. to conduct its analysis of reported non-Ford fatalities. The results are shown in the following table. The numbers shown are the combined totals for "yes" and "possible" category failures. Fatalities for which the model year is unknown are not included on this chart.

- 30a

Table 10 - Reported Fatalities Occurring on 1966 and Later Non-Ford Vehicles

Vehicle Model Year	No. of Reports Since 12/31/80 GM "Y"	 "P"	 Chrysler "Y"	 "P"	 AMC "Y"	 "P"
1966-1969	2	2	2	1	1	0
1970-1979	17	28	7	11	2	3
1980	1	2	1	0	1	0
1981-1985	3	2	3	2	0	1
Unknown	2	0	0	0	0	0

Tables 9 and 10 shows that reported Ford fatalities outnumber reported fatalities for each of Ford's domestic competitors. The effect of publicity on this reporting cannot be quantified.

3. NHTSA "FARS" Files

NHTSA's Fatal Accident Reporting System (FARS) is a computerized census of data on all fatal traffic accidents within the 50 States, the District of Columbia, and Puerto Rico. To be included in FARS, an accident must involve a motor vehicle travelling on a trafficway customarily open to the public and must result in the death of a person (occupant of a vehicle or a non-motorist) within 30 days of the accident. Fatal accident data have been collected under FARS since 1975. The FARS database is a valuable source of comparative fatality information because it is non-biased and not influenced by publicity. However, it should be noted that fatalities occurring in a driveway or parking lot are not included in FARS.

NHTSA searched the FARS file for all accidents which involved driverless vehicles and in which a pedestrian was killed. The search, which included all accidents which occurred in year 1975 (first FARS year available) through 1984, produced 443 records which met the search criteria. To obtain copies of available accident reports, NHTSA contacted a representative of each State for which such records were

- 30a

produced.[10] As of May 22, 1985, representatives of 37 states had submitted 308 accident reports. Of these 308 reports, 119 involved Ford vehicles; 117 involved General Motors (GM) vehicles; 43 involved Chrysler vehicles; 9 involved American Motors (AMC) vehicles; and 20 incidents involved 10 other manufacturers.

ODI analyzed the accident reports forwarded by the States to determine if accidents were in fact related to the subject problem. To assist in reaching an unbiased result, the FARS reports were categorized solely on the basis of information submitted. Figure 7 summarizes the FARS data showing both the numbers of fatalities and rates per 100,000 registered vehicles.

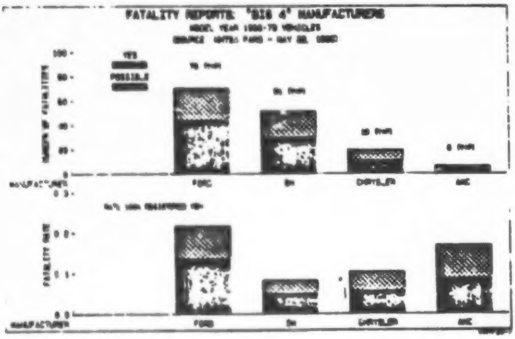


Figure 7

---

[10] Ford and CFAS also searched FARS for relevant accidents using apparently different search criteria.

- 3ca

4. CFAS List of Fatalities

In its letter of May 24, 1985, CFAS states: "By our count, fatalities stemming from the Ford park-to-reverse defect stand at 293. . . ." The CFAS also included an updated list of 108 Ford Park into Reverse Fatalities since December 30, 1980. By ODI's count, CFAS has actually alleged 296 "Park-to-Reverse" cases.

ODI carefully examined every "fatality" reported by CFAS, in accordance with the review procedures discussed above in Section V.B.1. Based upon this analysis, ODI has concluded that not all of the accidents on the CFAS fatality list are related to the problem mode; i.e., some fall into the "no" category. Examples of some of the problems with the CFAS list are shown below:

"Victim"	Comment
Brawner	Double count of the same failure. Brawner, who is still alive, is the mother of victim Robinson.
Campo	Not a fatality. Although CFAS reports death in 1976, a NHTSA contractor interviewed Mrs. Campo who suffered multiple bumps, bruises, contusions, and strains in the accident, in 1978.
Burleigh	Vehicle has a manual transmission.
J. Plank	Death not attributable to transmission failure. Mrs. Plank was apparently struck down by a vehicle driven by her 77 year old husband. Her husband, who got out of the car after hitting his wife, was run over by the vehicle in an apparent "Park-Reverse" accident.

– 30a

P. Roches	Death not attributable to accident. Mr. Roches, a 70 year old invalid, was a passenger in the vehicle driven by his wife who was killed in an apparent "Park to Reverse" accident. Mr. Roches was not physically injured in the accident. He died some 2 months later from an unrelated intestinal problem.

Of the Ford 296 fatalities cited by CFAS, ODI has concluded that 54 (including those cited above) should be classified as "No's" because they are are not related to the problem mode. Of the remaining 242, 214 involved MY 1970-1979 vehicles, 2 involved MY 1980-1985 vehicles, and 26 involved vehicles manufactured between 1966 and 1969.

ODI classified 88 of the 110 "fatal accidents" that CFAS reported to have occurred since December 30, 1980 as "yesses" and "possibles". Of the "yesses," 64 involved MY 1970-1979 vehicles and 2 involved MY 1980-1984 vehicles. Among the "possibles," 15 involved MY 1970-1979 vehicles, and none involved MY 1980-1984 vehicles.

By letter dated May 27, 1985 (P85-15-E5), CFAS furnished information regarding two fatal accidents involving non-Ford vehicles. The ODI has evaluated these accidents using the same evaluation procedure outlined earlier. The accident involving Mr. J. R. Nichols (unknown year Cadillac) is classified "Y" and the accident involving Mr. Percy Walston (1971 Chevrolet) is classified as "P."

C. Effect of 1980 Transmission Changes

1. Changes Made

The CFAS petition states:

"The clearest measure of the defect and Ford's ability to remedy it is found in the dramatic reduction of park-to-reverse reports on Ford and Lincoln-Mercury vehicles built after Ford implemented its design changes after the start of the 1980 model year production. Since the design changes were instituted, complaints on the later design Fords failing to hold or engage in park have fallen to one-twentieth of their former level."

- 300

a. Ford

According to information discovered during the C8-02 investigation and reported on in ODI's June 1980 report, Ford made changes to the Park apply system beginning with and during the 1980 model year production. These changes included:

- recontouring the inner manual lever (roostercomb),
- changes in detent spring forces,
- changes in the park pawl apply linkages,
- changes in the column insert plate, and
- linkage modifications in light trucks and vans.

In submissions by its counsel, Ford denied that the 1980 changes "caused" any reduction in reports, and attributed all changes in reporting patterns to unfair publicity that singled out Ford. (P85-15-11; P85-15-E1)

b. GM

In its letter of May 31, 1985, GM states that "[t]here have been no design changes of the Park apply system for GM automatic transmissions since model year 1980 that 'could have significantly affected the performance of the Park apply system'."

c. Chrysler

In its letter of May 28, 1985, Chrysler states: "The basic concepts and performance of Chrysler's automatic transmission Park apply system -- including the gear selector and gating system, the shift linkage, the transmission park sprag and detent system, and the adjustment procedure which enables a positive Park position -- have not been altered since the 1979 model year." Chrysler added that for the 1980-1984 model year period, certain detail changes were made to the FWD transaxle park sprag system which had a cumulative effect of a more positive and consistent performance of the system.

d. AMC

In its letter of May 14, 1985, AMC states: "There have been no changes to the automatic transmission system in these models which would significantly affect the performance of the Park apply system."

- 30a

2. FARS Data

ODI analyzed FARS data discussed previously to attempt to determine whether they demonstrate a "dramatic reduction" in Ford fatalities, as described in the CFAS petition, and if so, whether the reduction is attributable to the design changes. For comparative purposes, ODI also obtained information about post-1980 transmission system design changes from GM, Chrysler, and Ford (page 25), and analyzed available FARS data for those manufacturers to attempt to determine whether there had been a reduction in complaints for those vehicles, and, if so, whether that reduction could be attributable to design changes. ODI selected FARS data rather than accident and injury data as the database for this analysis because FARS data is unbiased and should not be affected by publicity.

The FARS reports were searched for accidents fitting the following criteria:

- o Accidents which occurred in 1980-1984 and involved 1980-1984 vehicles.
- o Accidents which occurred in 1980-1984 and involved 1975-1979 vehicles.

The results are shown in the Tables below for the "Yes" and "Possible" categories:

Table 11 - FARS Accidents in 1980-1984
Grouped By Model Year

Model Years	Ford		GM		Chrysler		AMC	
	"Y"	"P"	"Y"	"P"	"Y"	"P"	"Y"	"P"
1975-1979	13	4	6	9	2	1	0	1
1980-1984	1	1	1	0	3	1	0	0

The above analysis was repeated with the 1975 and 1980 model years excluded,[11] with the following results:

---

[11] The 1980 model year was excluded because Ford made changes to its transmissions at various times during that year and it is difficult to (Footnote continued on next page)

Table 12 - FARS Accidents in 1981-1984
Grouped By Model Year (Excluding 1975 and 1980)

Model Years	Ford		GM		Chrysler		AMC	
	"Y"	"P"	"Y"	"P"	"Y"	"P"	"Y"	"P"
1976-1979	8	2	4	7	2	1	0	1
1981-1984	0	1	1	0	2	1	0	0

Both of these tables show a reduction in the number of fatalities reported in FARS for MY 1980 and later Ford vehicles. However, both tables also show reductions in the number of GM fatalities reported in FARS for MY 1980 and later GM vehicles, although GM has stated that it made no significant design changes during this period. The data also show a small increase in Chrysler fatalities, which may not be explained by Chrysler's description of changes to its FWD transaxle park sprag system, as well as a numerically small (but complete) reduction in AMC fatalities (from 1 to 0). AMC stated that it made no significant changes to its transmissions during the period.

In each group depicted on the chart, the number of fatalities is quite small. However, because the absolute reduction for GM is roughly equal to that for Ford, the data suggest that it is not necessarily proper to attribute the decrease in Ford reports to its 1980 changes to its transmissions.

3. Incident Reports and Rate Data

Incident and accident reports to Ford described in Section V.A.1. do not agree in all respects with the FARS data in that there is no distinct overall reduction in the reported incident and accident rates for post-1980 Ford vehicles compared to pre-1980 Ford vehicles. This similarity in reported rates, however, does tend to contradict CFAS claims that the 1980 transmission changes had any measurable effect.

(Footnote continued from previous page)
determine whether any particular vehicle had a "modified" or "unmodified" transmission. The 1975 model year was excluded in order to equalize the number of years reported on for each group.

D. Effect of Publicity

Throughout the course of C8-02, and during the pendency of this petition as well, Ford has continuously claimed that the only reason for NHTSA's receipt of a disproportionate number of complaints of transmission incidents and accidents in Ford vehicles is that both the agency and CFAS have subjected Ford to an unfair and large-scale media campaign.

It is true that there was a substantial amount of publicity and media attention devoted to the Ford transmission investigation, which was one of the most, if not the most, well-publicized investigation in the agency's history.[12] Media attention was especially heavy during 1978 shortly after the agency opened Case C8-02 and when Ford conducted its "Hotline" campaign, and twice in 1980 when the agency made its initial defect determination and when the settlement was announced. Figure 1, a graph of complaints by year received by Ford, shows that the periods of highest reporting of transmission events indeed coincided with the periods of most intense publicity. This is not surprising. NHTSA's Associate Administrator for Enforcement testified on direct examination during trial in United States v. General Motors Corp., D.D.C., Ca. No. 83-2220 (pending), that "[m]y opinion is that publicity will generate complaints but the substantial majority, vast majority of those complaints I believe are legitimate expressions of problems that the complainants have had with their vehicles." (Transcript of testimony of George Parker, 3/25/85, p.14249.)[13]

NHTSA has been conducting an investigation, which has received substantial publicity, of alleged premature rear wheel lockup in General Motors A-body and J-body cars. Both groups of cars were cited together whenever they were discussed. Although the publicity was precisely the same with respect to the A-body and J-body vehicle populations, there were very remarkable complaint rate differences which, in the agency's view, conformed exactly to the engineering differences between the brakes in the two populations of vehicles. (Remarks of NHTSA Assistant Chief Counsel David W. Allen, 3/25/85, Tr. p. 14258-59). Both Ford and CFAS have cited Mr. Allen's remarks in discussing the effect of publicity in their supplemental submissions to the agency in opposition to and in support of the pending CFAS petition. (P85-15-E9) (P85-15-15), and both apparently recognize the substantive validity of those remarks.

---

[12] The Firestone tire investigation and the GM X-body brake investigation and lawsuit also have been the subjects of heavy publicity.

[13] During the same trial, counsel for General Motors conceded that although publicity might cause complaints, publicity did not cause skidding. United States v. General Motors Corp. (brakes) CA No. 83-2220 T p. 14449.

It is also true that there has been far less publicity and media attention devoted to transmission problems in vehicles manufactured by Ford's competitors, although the agency has acknowledged in recent years that any vehicle can fail to hold or engage in park if the driver fails to shift fully into park or to follow appropriate precautions when leaving any vehicle (Testimony of NHTSA Administrator Diane Steed at hearings before Congressman Timothy Wirth, 7/27/83). The agency acknowledges that this difference in amount of publicity may have contributed to the fact that people have reported fewer non-Ford transmission events to the agency. However, the FARS data discussed in Section V.B.3., which is derived from a non-biased sample that is presumably not affected by publicity, shows a higher rate of reports of Ford transmission fatalities than GM transmission fatalities (Figure 7). This suggests two things: (1) that the disproportionate reporting of Ford transmission events is not solely attributable to publicity; and (2) that the absence of publicity for non-Ford events does not completely preclude the reporting of non-Ford events.[14]

The agency is unable to quantify the effect of publicity on the reporting of Ford transmission events. Nevertheless, although the agency does not deny that publicity may have distorted the proportionate reporting of Ford versus non-Ford events, it cannot conclude from the evidence in this record that publicity is solely responsible for the apparent over-representation of Ford transmission complaints in the entire transmission complaint population.

---

[14] The "Hotline data" collected by NHTSA during C8-02 from persons who called the agency about other non-transmission related subjects, based on questions that did not name any manufacturer, also showed that Ford transmission complaints outnumbered transmission complaints for any other manufacturer, although it was collected from presumably neutral sources. However, those data were collected during a period when there was fairly intensive publicity about C8-02, and the weight to be accorded to the data it is thereby diminished. (See ODI Phase I Report at pp. 23)

- 30a

VI. OBSERVATIONS

1. ODI has discovered no new technical information bearing on the problem which would alter the agency's findings as stated in its June 1980 report.

2. The number and rate of reported incidents, property damage and injury accidents involving 1970-1979 model year Ford vehicles has declined in every calendar year since the December 1980 settlement. The number of reported Ford fatalities declined every year until calendar year 1984, when it increased slightly, thereby driving up the rate of reported fatalities as well. The complete count for 1985 is not yet available. Given the relatively small number of fatalities in any given year, statistically valid projections for future fatality trends would be difficult.

3. The number of reported incidents, property damage, injury and fatal accidents involving 1970-1979 model year Ford vehicles continues to be disproportionately higher than the number of such reported events for peer 1970-1979 GM, Chrysler, and AMC vehicles. Publicity-based differences in reporting these events to the agency or the manufacturer may skew the results and invalidate comparisons of incidents and to some degree, accidents. However, the FARS database, which is unbiased and which should not be affected by publicity, shows twice as high a rate of fatalities for Ford as it does for General Motors.

4. The FARS data, as well as other data, show that vehicles manufactured by all four of the domestic automakers have reportedly been involved in fatal accidents which ODI would categorize as related to the "Park-to-Reverse" failure mode.

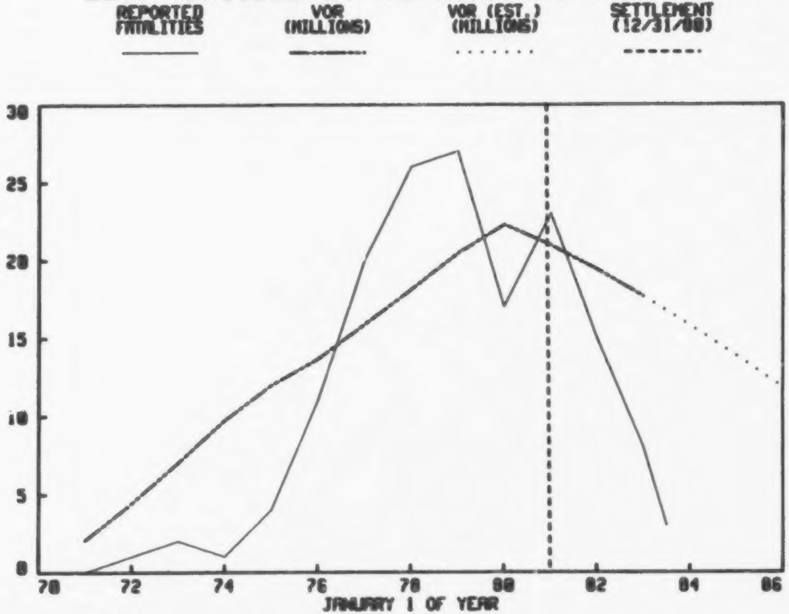
5. The FARS data show that the "dramatic reduction" cited by CFAS in the number of reported incidents involving 1980 and later Ford vehicles, which CFAS attributes to Ford's 1980 mechanical changes to the vehicles, is also observed for GM vehicles on which GM claims to have made no significant transmission design changes. The cause of this reduction is not known, but the parallel reductions suggest that the Ford's 1980 changes are not necessarily the explanation for the reduction in reported fatal accidents in later-manufactured Ford vehicles.

6. A comparison of the normalized (rate per 100K VOR) incident/accident data for 1970-1979 and 1981-1984 Ford vehicles does not reflect a significant difference. This suggests that, contrary to CFAS' assertion, the 1980 changes did not dramatically improve Ford vehicles' ability to engage or hold in Park.

- 30 a

Attachment D

REPORTED C802 PARK TO REVERSE FATALITIES AND EST. VEHICLES ON THE ROAD (VOR) VS YEAR



155 FATALS

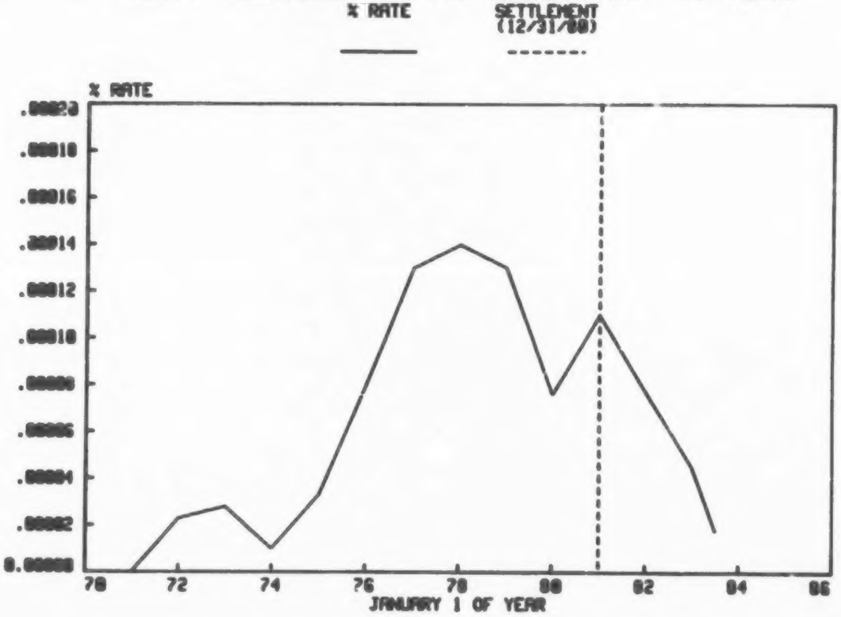
*C802 FATALITIES [illegible]

BEST COPY AVAILABLE

1B
**

Attachment E

RATE OF REPORTED C802 FATAL ACCIDENTS PER EST. VEHICLES ON THE ROAD (VOR) VS YEAR



"[illegible]" OFFICIAL RECORD FOR [illegible] HEARING [illegible] 27 1983

180

BEST COPY AVAILABLE

ATTACHMENT 5

Attachment F

CHART 1

October 3, 1983

PARK TO REVERSE FATALITY REPORTS BY FAILURE DATE
(ALL SOURCES - SOME UNVERIFIED)

		FAILURE DATES					
		BEFORE JUNE 12, 1980 (PHASE I)	JUN 12, 80- DEC 31, 80 (SETTLEMENT)	JAN 01, 81- MAR 24, 81 (START OF FORD NOTIFICATION)	MAR 25, 81- MAY 31, 81 (END OF FORD NOTIFICATION)	JUN 01, 81- PRESENT	TOTALS
1.	C8-02 (JULY 1983)	118 (0.06)	15 (0.07)	4 (.05)	3 (.04)	19 (.02)	159
2.	C8-02 FATALITIES (10/3/83)	119 (.07)*	16 (.08)**	4 (.05)	3 (.04)	28 (.03)	170
3.	C8-02 FATALITIES PLUS "C8-02 INSUFF. DETAILS"	133 (.07)	18 (.09)	4 (.05)	3 (.04)	30 (.04)	188
4.	C8-02 FATALITIES PLUS "67-69" FATALITIES	129 (.07)	16 (.08)	5 (.06)	3 (.04)	32 (.04)	185
5.	C8-02 FATALITIES WITH (3) & (4) & "67-69 INSUFF. DETAILS"	155 (.08)	18 (.09)	5 (.06)	3 (.04)	34 (.04)	215

Notes:

* Rates shown in this column are the death/day rates between case opening (October 18, 1977) and settlement (December 31, 1980).

** Number in parenthesis shows the rate of fatalities per day over the period shown.

CHART 2

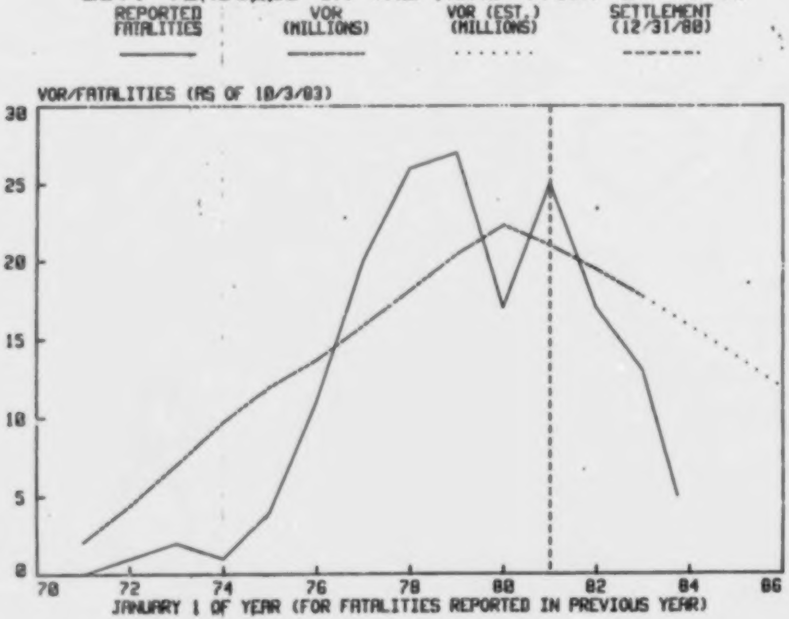
October 3, 1983

PARK TO REVERSE FATALITY REPORTS BY FAILURE DATE (ALL SOURCES - SOME UNVERIFIED)

	FAILURE DATES					
	BEFORE JUNE 12, 1980 (PHASE I)	JUN 12, 80-DEC 31, 80 (SETTLEMENT)	JAN 01, 81-MAR 24, 81 (START OF FORD NOTIFICATION)	MAR 25, 81-MAY 31, 81 (END OF FORD NOTIFICATION)	JUN 01, 81-PRESENT	TOTALS
C8-02 FATALITIES (10/3/83)	119	16	4	3	28	170
C8-02 (JULY 1983)	118	15	4	3	19	159
C8-02 NEW COUNTS	1	1	0	0	9	11
C8-02 "INSUF. DETAILS"	14	2	0	0	2	18
"67-69" FATALITIES	10	0	1	0	4	15
"67-69 INSUFF. DETAILS"	12	0	0	0	0	12

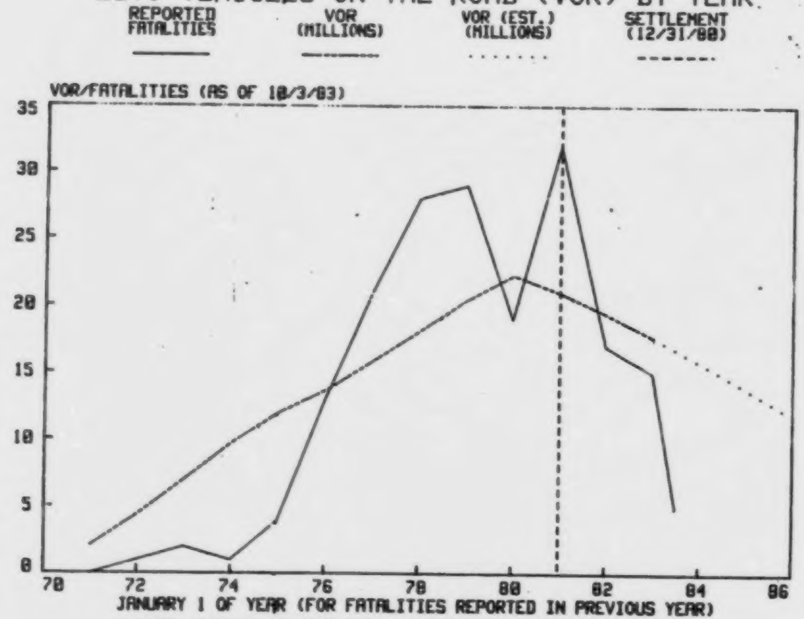
GRAPH 1

REPORTED C802 PARK TO REVERSE FATALITIES AND EST. VEHICLES ON THE ROAD (VOR) BY YEAR



GRAPH 2

ALLEGED C802 PARK TO REVERSE FATALITIES AND EST. VEHICLES ON THE ROAD (VOR) BY YEAR

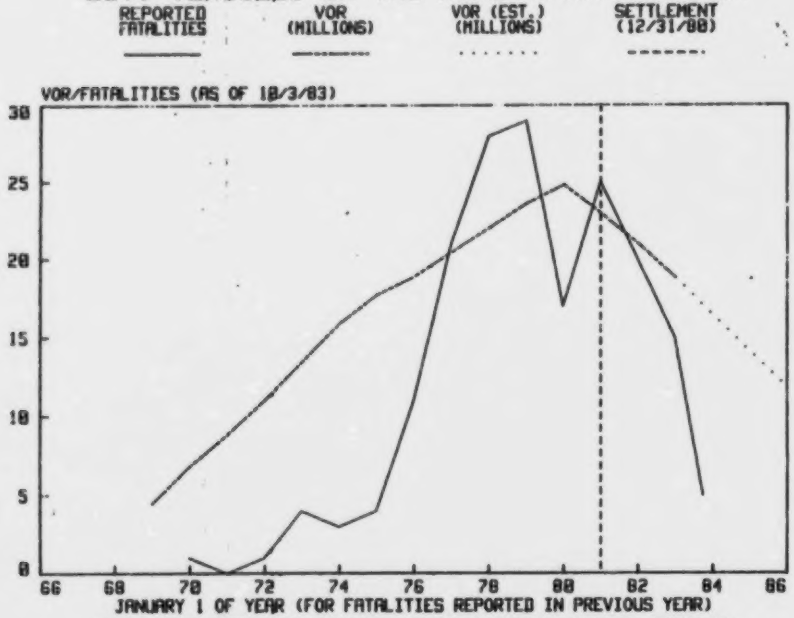


NOTE; FATALITIES INCLUDE 10 "INSUFF. DETAIL" C802 REPORTS

BEST COPY AVAILABLE

GRAPH 3

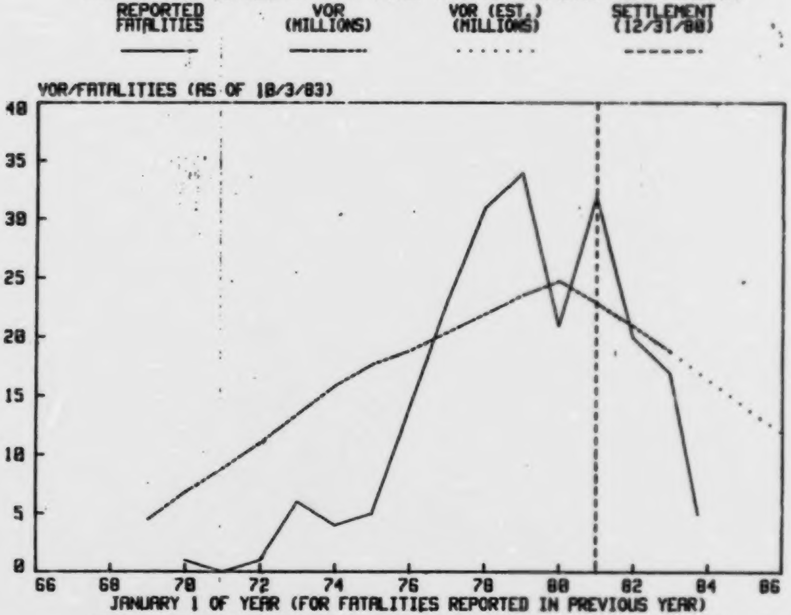
REPORTED FORD PARK TO REVERSE FATALITIES AND EST. VEHICLES ON THE ROAD (VOR) BY YEAR



NOTE: FATALITIES INCLUDE C002 VEHICLES PLUS 15 1967-69 VEHICLES

GRAPH 4

ALLEGED FORD PARK TO REVERSE FATALITIES AND EST. VEHICLES ON THE ROAD (VOR) BY YEAR



NOTE: REPORTS INCLUDE 1967-79 PLUS 30 "INSUFF. DETAIL" VEHICLES

BEST COPY AVAILABLE

Attachment G

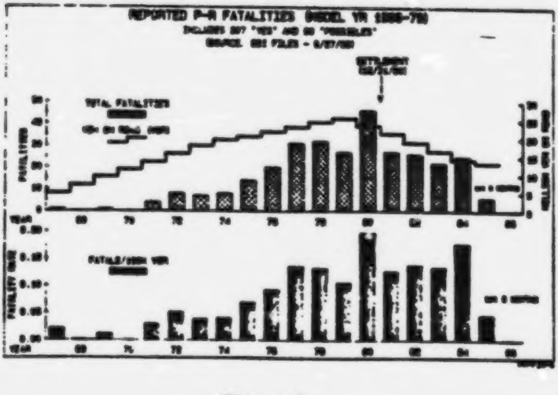


Figure 6

- 30a

BEST COPY AVAILABLE

July 15, 1983 5

Attachment H

TOTAL UNVERIFIED C8-02 "P-R" FAILURE REPORTS (LESS DUPLICATES) SINCE DECISION (12/31/80) EXCEPT FOR "FAILURE WITH DEATH" (SEE FOOTNOTE)

1. Letters received by the Office of Defects Investigation as of July 15, 1983.

2. C8-02 related documents submitted by Ford September 30, 1981; April 6, 1982; April 26, 1982; January 31, 1983; February 7, 1983; and May 4, 1983; June 10, 1983; and June 17, 1983

FAILURE DATES

	BEFORE JUNE 12, 1980 (PLUS PHASE 1)	JUN 12, 80-DEC 31, 80	JAN 1, 81-MAR 24, 81	MAR 25, 81-MAY 31, 81	JUN 1, 81-PRESENT	UNKNOWN	TOTALS (PLUS PHASE 1)
Reports of Failure on Ford Vehicles	1,546 + 23,402	566 (2.8)	288 (3.5)	285 (4.3)	760 (1.0)	1,441	4,886 + 23,402
Failure With Property Damage	1,230 + 4,500 (est.)	443 (2.2)	193 (2.3)	194 (2.9)	526 (.7)	1,021	3,607 + 4,500 (est.)
Failure With Injury	510 + 1,720	194 (1.0)	104 (1.3)	107 (1.6)	287 (.4)	280	1,482 + 1,720
Failure With Death	21 + 97	15 (.07)	4 (.05)	3 (.04)	19 (.02)	0	62 + 97

Notes:

- o Number in parenthesis shows the average number of reports per day over the period shown.
- o The comparable death/day rate for reported fatalities occurring between case opening (October 18, 1977) and December 31, 1980 is approximately (.06).
- o The "Phase I" failures shown in the chart are the summary totals listed in the NHTSA report dated June 1980. These reports were received from all sources.
- o The Failure With Death row includes C8-02 Park-to-Reverse fatality reports received between the end of Phase I (June 1980) and Decision (December 31, 1980).
- o Documents submitted by Ford on June 10 and 17, 1983, have not been cross-checked for possible double-reporting to the ODI.

December 13, 1984

TOTAL UNVERIFIED C8-02 "P-R" FAILURE REPORTS (LESS DUPLICATES) SINCE DECISION (12/31/80)

1. Letters processed by the Office of Defects Investigation as of December 13, 1984.

2. C8-02 related documents submitted by Ford (and Ford Counsel) on September 30, 1981; April 6, 1982; April 26, 1982; January 31, 1983; February 7, 1983; May 4, 1983; June 10, 1983; June 17, 1983; September 21, 1983; September 28, 1983; October 14, 1983; April 18, 1984; May 11, 1984; November 9, 1984; and December 6, 1984.

FAILURE DATES

	PHASE I*	BEFORE JUNE 12, 1980	JUN 12, 1980-DEC 31, 1980	JAN 1, 1981-MAR 24, 1981	MAR 25, 1981-MAY 31, 1981	JUN 1, 1981-PRESENT	UNKNOWN	TOTALS
Reports of Failure on Ford Vehicles	23,402	2,025	677 (3.35)*	341 (4.11)	330 (4.93)	1,409 (1.09)	1,660	6,442
Failure With Property Damage	4,500 (est.)	1,415	403 (2.09)	240 (2.89)	223 (3.33)	911 (.71)	1,122	4,394
Failure With Injury	1,720	902	286 (1.42)	116 (1.40)	132 (1.97)	611 (.47)	315	2,362
Failure With Death	97	22	17 (.084)	4 (.048)	3 (.045)	44 (.034)	0	90

*Notes:

- Number in parenthesis shows the average number of reports per day over the period shown.
- The comparable death/day rate for reported fatalities occurring between case opening (October 18, 1977) and December 31, 1980 is approximately (.066).
- The "PHASE I" columns are the failure summary totals listed in the NHTSA report dated June 1980. These figures are not included in the "TOTALS" column.
- The Faiulure With Death row represents all known C8-02 Park-to-Reverse fatality reports.

189

Attachment J

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

CENTER FOR AUTO SAFETY, *et al.*, Plaintiffs - Appellants, v. ANDREW L. LEWIS, Secretary of Transportation, et. al., Defendants - Appellees	No. 81-2270

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ISSUES PRESENTED FOR REVIEW

1. Whether in the absence of a final agency determination concerning an alleged safety-related defect, the Secretary of Transportation ("the Secretary") has the authority to settle the investigation of the alleged defect without requiring mechanical repair, replacement or refund of the purchase price of the vehicles under investigation.

2. Whether the Court correctly concluded that the Secretary's decision to settle the Ford transmission investigation was a reasonable exercise of his discretion.

This case has not previously been before this Court. Counsel is aware of no related cases presently pending in, or that may be presented to, this Court or any other court.

REFERENCE TO RULINGS

The decision appealed from was issued by District Judge Gasch on October 21, 1981, is not yet reported, and appears at Joint Appendix (hereinafter "JA"), 16.

STATUTES

The relevant provisions of the statute involved in this case, the National Traffic and Motor Vehicle Safety Act of 1966, as amended (Act of September 9, 1966, Pub. L. No. 89-563, 80 Stat. 718 et seq., 15 U.S.C. 1381 et seq.) (hereinafter referred to as the "Safety Act" or "Act") are reproduced in Appendix A to this Brief.

COUNTERSTATEMENT OF THE CASE

This is an appeal from an order issued by the U.S. District Court for the District of Columbia in a civil action brought by the Center for Auto Safety 1/ and others challenging the Secretary's settlement of a safety defect investigation of some 23 million Ford vehicles equipped with automatic transmissions. At issue is the validity of the District Court's determination of the scope of discretion vested in the Secretary by the Safety Act and of its assessment of the Secretary's exercise of his discretion.

1/ Hereinafter Appellants shall be referred to as "CFAS".

The Court below, in granting the Government's motion for summary judgment, found that under the Safety Act

> "the Secretary has the widest discretion in his handling of defect investigations and in what evidence he may consider in deciding whether to make a final determination of a safety-related defect." Slip op. 9, JA 25.

Based on its review of the undisputed portions of the record the court held that

> "[t]he Secretary's decision to settle with Ford was a reasonable exercise of his discretion . . . ." Slip op. 12, JA 28.

CFAS argues, to the contrary, that the Secretary has no discretion to settle defect investigations. Focusing on the facts that it believes support its case and discounting all others, CFAS alternatively argues that the Secretary's action was arbitrary and capricious.

1. Proceedings Below

On March 6, 1981, CFAS instituted this lawsuit, seeking to compel the Secretary to require Ford Motor Company ("Ford") to recall for mechanical repair 10 million Ford vehicles equipped with automatic transmissions. Following discovery by CFAS, the Government moved to dismiss the complaint, or in the alternative for summary judgment. CFAS then filed a cross-motion for summary judgment. After hearing oral argument, District Judge Gasch granted the Government's motion for summary judgment and denied all other motions. This appeal followed.

The District Court found that review based on the full administrative record before the Secretary was required by Citizens To Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402 (1971), but that under Ethyl Corp. v. Environmental Protection Agency, 541 F.2d 1 (D.C. Cir. 1976), (en banc), cert denied, 426 U.S. 941 (1976), it could not substitute its judgment for that of the agency and must affirm if there were a rational basis for the decision. It saw the essential issue as whether the agency's statement of reasons is sufficiently supported by evidence on the record to demonstrate that the decision was not arbitrary and capricious. The court concluded, based on the undisputed portions of the record, that

> "it is clear that there was a rational basis for the Secretary's decision to settle the Ford transmission investigation." Slip op. 10, JA 26.

2. The Statutory Scheme

The purpose of the Safety Act, as declared by Congress, is "to reduce traffic accidents and deaths and injuries resulting from accidents." 15 U.S.C. § 1381. Among the means chosen by Congress to accomplish this purpose is the requirement that motor vehicles determined by the Secretary of Transportation or by the vehicle manufacturer to contain a defect which relates to motor vehicle safety be recalled.

The Act defines defect to include "any defect in performance, construction, components or materials" of motor vehicles or motor vehicle equipment. (15 U.S.C. § 1391(11)). Motor vehicle safety is defined as

> ". . . the performance of motor vehicles . . . in such a manner that the public is protected against unreasonable risk of accidents occurring as a result of the design, construction or performance of motor vehicles, and unreasonable risk of injury or death to persons in the event accidents do occur . . . ." 15 U.S.C. § 1391(1)

Where there has been a final determination of a defect, the Act requires that the vehicle manufacturer provide to the owner of the vehicle notification of the defect in accordance with the provisions of section 153 (15 U.S.C. § 1413); and, for vehicles within the eight-year statute of limitations, remedy of the defect without charge in accordance with section 154 (15 U.S.C. § 1414). Section 154 gives the manufacturer the option of remedying the vehicle by repair, replacement of the vehicle, or refund of the purchase price. 15 U.S.C. § 1414(a)(2)(A).

A two-stage process for the conduct of defect investigations is established in section 152 of the Safety Act. 15 U.S.C. § 1412. Initially the agency conducts its investigation. If this investigation provides reason to believe that a vehicle may contain a defect that relates to motor vehicle safety, the Secretary notifies the manufacturer of this preliminary determination, provides it the information upon which the determination is based and provides the manufacturer and the public an opportunity to present data, views, and arguments. 15 U.S.C. § 1412(a). Following the public proceeding, the Secretary reviews the data, views, and arguments presented. If he then determines that a safety-related defect is present he "shall order the manufacturer to (1) furnish notification . . . and (2) to remedy such defect . . . ." 15 U.S.C. § 1412(b).

Thus, the Safety Act provides for two distinct occasions when the Secretary or his delegate may "determine" that vehicles contain a defect. The first of these determinations referred to in section 152(a), has been characterized by NHTSA as the "initial determination," and results only in the commencement of a public proceeding at which the manufacturer and other interested persons may present data, views and arguments. If the Secretary or his delegate makes the second determination, referred to in section 152(b) and characterized by NHTSA as a "final determination," an order that the manufacturer furnish notification pursuant to section 153 and a remedy pursuant to section 154 of the Act is issued. 15 U.S.C. §§ 1413, 1414. This procedure is further explained in the National Highway Traffic Safety Administration ("NHTSA") regulations found at 49 CFR, Part 577.

A final determination and order issued pursuant to section 152 is not self-enforcing. If the manufacturer fails or refuses to comply with such an order, the agency may seek enforcement by requesting the Attorney General to bring a civil enforcement action against the manufacturer pursuant to sections 110 and 155 of the Safety Act, 15 U.S.C. §§ 1399, 1415. In such a civil action, the manufacturer is entitled to a trial de novo in which the government has the burden of proving that the vehicles contain a defect and that the defect is safety-

related. United States v. General Motors Corp., 518 F.2d 420, 426, n.7 (D.C. Cir. 1975); Ford Motor Company v. Coleman, 402 F.Supp. 475, 480 (1975), aff'd mem. 425 U.S. 927 (1976).

3. The Administrative Proceeding

a. The Investigation

On October 18, 1977, the NHTSA's Office of Defects Investigation ("ODI") commenced an investigation to determine whether Ford vehicles equipped with certain automatic transmissions contained a safety defect within the meaning of the Act. This investigation concerned allegations that these transmissions could slip from the park position to the reverse position when unattended, resulting in uncontrolled movement which could cause and had caused accidents, deaths and injuries.

This extensive investigation encompassed some 23 million vehicles, dating back to 1970, equipped with five major types of automatic transmissions, and over twenty types of transmission control systems, depending on the type of vehicle, size of the engine and options ordered with the vehicle. The subject vehicles comprise nearly 20 percent of all passenger vehicles on the highways. ODI "Phase I" Report, p. 98, JA 135. In a period that extended over two and one-half years, NHTSA amassed over 382 cubic feet of documents relating to the investigation, including reports of park-to-reverse accidents, blueprints of the transmissions, and engineering evaluations of various types of transmissions; and conducted examinations of state accident records, human factors studies and a number of tests aimed at providing some understanding of the cause of the accidents which were being reported to NHTSA. Berndt Affidavit, p. 4, JA 328.

The investigation also revealed reports of similar accidents occurring in vehicles with automatic transmissions manufactured by General Motors Corporation, Chrysler Corporation and others. ODI "Phase I Report, pp. 13, 15, JA 50, 52. Examination of Ford vehicles reported to have been involved in a "park-to-reverse" incident revealed that following the reported incident, the park system appeared to function normally in most instances. Id. pp. 11, 27, JA 48, 64.

b. The Initial Determination and Public Proceeding

In May of 1980, at the direction of the NHTSA Administrator, ("the Administrator") a summary of information regarding the NHTSA's investigation of the Ford transmissions was furnished to the Secretary and his staff. On June 9, 1980, Eugene Amato, then the Deputy Administrator of NHTSA, informed Ford that he had made an initial determination on behalf of NHTSA that a safety-related defect existed in Ford vehicles equipped with the subject transmissions.

On August 20-22, 1980, the public proceeding pursuant to 15 U.S.C. § 1412(a)(2) of the Act was held. Ford and other interested persons, including some of the Appellants (the Center for Auto Safety, the Automobile Owners' Protection Association, Constance K. Bartholomew, Edwin G. Cannon, Jr., and William J.

Cleary) presented data, views, and arguments regarding the initial determination.

At the proceeding, Ford contended that the vehicles in question did not contain a defect. Ford's stated position was that there was no mechanical defect in its products; that operators of all makes of vehicles occasionally fail to engage "park" properly, causing the alleged transmission slippage; that Ford vehicles are no more likely than Ford's competitors' products to slip into reverse if the gearshift lever is not properly secured in the park position; that the number of reports of failures in Ford vehicles was greatly exaggerated; and that the publicity surrounding the agency's investigation was responsible for any apparent disparity in the frequency of park systems failures in Ford vehicles compared to other makes of vehicles. 2/ Ford also stressed that it would seek judicial review of any agency decision to order the notification and mechanical remedy; and, in fact, on August 20, 1980, filed an action in the United States District Court for the District of Delaware which sought, in effect, pre-enforcement judicial review of the investigative proceeding. Ford Motor Co. v. NHTSA, D.Del., No. 80-409, dismissed by stipulation.

2/ Ford's testimony is found in the investigative file at C8-02-E129. A summary of Ford's position is contained in the Joint Appendix at 138 and 217.

c. Post-Hearing Events

On October 3, 1980, NHTSA Administrator Claybrook prepared and executed a memorandum directed to DOT Secretary Goldschmidt, recommending, subject to the Secretary's approval, that a final determination of a safety-related defect be made with respect to those vehicles under investigation equipped with the automatic transmissions known as the "C-3", "C-4" and "FMX". JA 293. With respect to the vehicles equipped with the "C-6" and "JATCO" transmissions, the Administrator recommended that the possibility of negotiations with Ford be explored. Id. The Administrator's memorandum followed the format prescribed by Department of Transportation policy and practice for the purpose of recommending a course of action to the Secretary for his consideration and approval. Berndt Aff. ¶ 9, JA 329. The heading of the memorandum specifically included the word "ACTION," and spaces were provided for the Secretary to indicate by his signature his approval or disapproval of the recommendation. JA 307. This memorandum was never signed by the Secretary, and no other document or instrument was prepared or issued by or on behalf of Administrator Claybrook or Secretary Goldschmidt which is alleged to contain a final defect determination. Berndt Aff. ¶ 9, JA 329.

d. The Settlement

In November 1980, at the direction of the Secretary, negotiations with Ford were initiated. The negotiations encompassed all Ford vehicles covered by the June 9, 1980 initial determination. General Counsel Allison represented the Secretary of Transportation in these negotiations, and had the principal role as spokesman for the Department of Transportation. 3/ Berndt Aff. ¶ 10, JA 329.

On December 30, 1980, General Counsel Allison, in his capacity as Acting Secretary of Transportation, executed an agreement with Ford in settlement of the investigation. JA 329, JA 315. By the terms of this agreement, Ford was obliged to send to all owners of vehicles covered by the June 9, 1980, initial determination a letter notifying them of NHTSA's initial determination of defect and containing a self-sticking warning label, to be affixed to the interior of the vehicle, advising of safety precautions to be observed to prevent unexpected rearward vehicle movement. Acting Secretary Allison stated that while the Department disagreed with Ford's characterization of the safety issues presented during the investigation, it believed that the warning labels and letters would resolve the Department's safety concerns. However, he reserved to the Department the right to take further action if justified by subsequently developed facts. JA 315.

The agreement also stated that NHTSA would close its investigation when notified that Ford had mailed the notifica-

---

3/ General Counsel Allison had participated in NHTSA's August 20-22, 1980, public proceeding held after the initial determination of a defect. NHTSA's Chief Counsel, Mr. Berndt, assisted Mr. Allison at the negotiations. Both were familiar with the facts and data in the public record. Berndt Aff. ¶¶ 5, 10, J.A. 327.

tion letters and warning labels. Ford has notified NHTSA that it has completed mailing the notification letters and warning labels to registered owners of the affected vehicles. These letters and labels conform to the undertaking set forth in the December 30, 1980, settlement agreement. Accordingly NHTSA has closed its investigation. Berndt Aff. ¶ 13, JA 330.

SUMMARY OF ARGUMENT

Because it foresaw that unanticipated problems might occur in the design and manufacture of vehicles, Congress gave the Secretary the authority to order the recall and remedy of vehicles he determined to contain a safety-related defect. This grant of statutory authority necessarily confers broad discretion on the Secretary to investigate and determine the existence of safety-related defects. Only when the Secretary makes a final determination that "a defect" which causes "an unreasonable risk" exists is the Safety Act specific in establishing a remedy. Otherwise, the Secretary has discretion to settle an investigation of an alleged safety-related defect in a motor vehicle without requiring mechanical repair, replacement, or refund of the purchase price of the vehicle.

Although the NHTSA Administrator recommended that a final determination be made concerning some of the vehicles under investigation, this recommendation did not purport to be a final determination, and the Secretary, as the official ultimately responsible for enforcement of the Safety Act, is not bound to accept the recommendations of the Administrator.

CFAS argues that a safety-related defect was found by the Secretary or his delegate. However, the record clearly demonstrates, as the District Court found, that neither the Secretary nor the NHTSA Administrator finally determined that Ford vehicles equipped with automatic transmissions contained a safety-related defect. Accordingly, the mandatory remedy provisions of section 154 do not govern this case.

The District Court's decision, that "[t]he Secretary's decision to settle with Ford was a reasonable exercise of his discretion," is correct, and should be upheld. CFAS's argument that the District Court failed to afford adequate weight to parts of the administrative record is without support in the record. The opinion below demonstrates that the District Court concluded that the evidence favoring a finding of a defect was not as compelling as CFAS would have this court believe, and that the Government faced "difficult, if not insurmountable, problems of proving that a defect actually existed," Slip op. 11, JA 27. The District Court considered the facts advanced by CFAS as well as the administrative record in deciding this case.

Although CFAS argues that the Secretary's action was arbitrary and capricious because the warning label cannot prevent all future accidents, no remedy, including the remedy sought by CFAS, can prevent all future accidents of this type. The December 30, 1980, exchange of letters, examined in light of the public record, provides an adequate statement of the reason for the Secretary's action. 4/

ARGUMENT

THE DISTRICT COURT DID NOT ERR IN CONCLUDING THAT THE SECRETARY HAS DISCRETION TO SETTLE DEFECT INVESTIGATIONS

Appellants contend that the District Court made an error of law in concluding that the Secretary had discretion to agree to a settlement of the Ford transmission defect investigation which provided that Ford would mail notification letters and warning labels to owners of affected vehicles. To the contrary, the Secretary's decision to settle the transmission investigation was a proper exercise of the discretion conferred upon him by the Safety Act. Therefore the District Court's decision was correct and must be affirmed.

4/ The government also advanced two additional arguments below which were not adopted by the District Court but which the government still regards as valid reasons for denying the judicial intervention sought by CFAS. First, CFAS lacks standing to bring this action primarily because it cannot show that the relief the court might grant would redress the harm it alleges. Simon v. Eastern Kentucky Welfare Rights Organization, 426 U.S. 26 (1976). The organizational plaintiffs especially lack standing because they failed to show that they represent their members, who are mere financial contributors having no control of the actions of the organizations. Hunt v. Washington State Apple Advertising Commission, 432 U.S. 333 (1977); Health Research Group v. Kennedy, 82 F.R.D. 21 (D.D.C. 1979).

Second, the Secretary's decision resolving a law enforcement matter with disputed facts, is the kind of action committed to the unreviewable discretion of the Secretary within the meaning of 5 U.S.C. § 701(a)(1) and under the tests for reviewability set out in Southern Railway Co. v. Seaboard Allied Milling Corp., 442 U.S. 444 (1979).

A. In the Absence of a Final Determination of Defect, the Secretary Does Not Have a Mandatory Duty to Order a Remedy Specified By Section 154 of the Safety Act.

At the core of CFAS's argument that the Secretary lacked the authority to settle the transmission investigation as he did is the misconception that the Secretary has a mandatory duty to order a remedy that complies with section 154 of the Safety Act (15 U.S.C. § 1414), even though he has made no final determination under section 152(b) of the Act (15 U.S.C. § 1412(b)) that a safety-related defect exists.

In making this argument, CFAS makes much of the "plain language" of the Act, in section 152(b), 15 U.S.C. § 1412(b), that, CFAS says, supports its position. (Appellant's Brief, hereinafter "CFAS Brief" at 22). In doing so, however, CFAS conveniently ignores that portion of section 152(b) which has the most direct bearing on this issue. Section 152(b) establishes an enforcement scheme with a combination of mandatory and discretionary authority, so that the Secretary has discretion to determine whether a defect exists ("If *after such presentations* the Secretary determines . . . "); but has a duty to order statutory remedies *only* if he makes such a determination ("*then* he *shall* order the manufacturer . . . to remedy such defect . . . in accordance with section 154." 15 U.S.C. §§ 1412(b) (emphasis added)). This language makes it plain that the duty to order a remedy that complies with section 154 arises only if the Secretary has made a final determination that a safety-related defect exists. 5/

CFAS apparently does not now contend that such a final determination was ever made -- and, of course, it would be impossible for CFAS to make that showing, since none was ever made. 6/ Therefore, the Secretary had no mandatory duty to order a remedy that complies with section 154 of the Safety Act.

B. In the Absence of a Final Determination of Defect, the Safety Act Does Not Limit the Secretary's Discretion to Settle Defect Investigations

CFAS argues that the language of section 152(b), that the Secretary "shall" order a remedy in accordance with section 154 (when he determines that a safety-related defect exists), deprives the Secretary of the authority to settle the transmission investigation on the terms agreed upon by the Acting

---

5/ In United States v. General Motors Corp., 518 F.2d 420 (D.C. Cir., 1975) this court found that "Judicial review involvement in the defect notification process takes place only in cases where the Secretary, after affording the manufacturer an opportunity to present it views, reaffirms his defect determination by directing the manufacturer to issue notices . . . ." 518 F.2d at 426.

6/ CFAS' complaint was premised on the theory that Administrator Claybrook's October 3, 1980, memorandum of recommendations to the Secretary constituted a final determination. The District Court rejected this argument and specifically found that no final determination of defect was made in the Ford transmission investigation. Slip op. at 2, n. 2, JA 18. Although CFAS apparently continues to believe that the Administrator's memorandum constituted a final determination (CFAS Brief, n.4), it does not argue that the District Court's finding was reversible error.

Secretary and Ford - - that is, for a correction of the alleged defect other than mechanical repair. Even assuming *arguendo* that the warning label was not a 'repair' 7/ within the meaning of section 154, this proposition must be rejected as incorrect on its face.

CFAS argues that because the Safety Act mandates particular remedies for safety-related defects, *i.e.*, defects which present an *unreasonable* risk to the public, NHTSA's authority to settle investigations is closely circumscribed. However, the courts have held that the governing statute merely "provide(s) the broad outline of the objectives to be reached and the mechanisms to be used" in reaching settlements. The parties are permitted some leeway to agree to terms which may vary from the limits of the statute as long as they are not "wholly outside the purview of Congressional pronouncement." *E.E.O.C. v. Safeway Stores, Inc.*, 611 F.2d 795, 799 (10th Cir., 1979).

The courts defer to agency discretion in settling cases because they recognize the value of such agreements in avoiding lengthy litigation and hastening the resolution of matters where there is a public interest in prompt action. *See*, *e.g.*, *United States v. Armour & Co.*, 402 U.S. 673, 681 (1970). Moreover, because the benefits achieved by settlements and

---

7/ The Government believes and argued below, that the notification and warning label program constitutes a remedy within the meaning of section 154 in this case because it can improve the driver's awareness of the characteristics of the transmission park system and thereby reduce the risk of accident, death or injury resulting from a problem related to the interaction of the driver and the vehicle. The District Court's opinion did not reach this issue.

consent decrees would not be possible in the absence of compromise, the courts will not overturn such agreements merely because they do not obtain a remedy which is equal in kind or extent to that which could be achieved in litigation. United States v. Trucking Employees, Inc., 561 F.2d 313 (D.C. Cir. 1977); United States v. Allegheny-Ludlum Industries, Inc., 517 F.2d 826 (5th Cir. 1975), Containair Systems Corp. v. N.L.R.B., 521 F. 2d 1166 (2d Cir. 1975).

The breadth of discretion allowed to agencies to settle cases is demonstrated by the fact that even agencies governed by language creating mandatory enforcement duties, such as the F.T.C., (see e.g., 15 U.S.C. § 21(b), 45(b)) have the power to enter into consent decrees in lieu of litigation. See, e.g., Action on Safety and Health v. F.T.C., 498 F.2d 757 (D.C. Cir. 1974); (FTC Act); F.T.C. v. Jantzen, Inc., 383 F.2d 981 (9th Cir. 1967) (on remand), citing, Swift & Co. v. United States, 276 U.S. 311 (1928) (FTC Act). See also, United States v. Automobile Manufacturers Ass'n., 307 F. Supp. 617 (D.Cal. 1969), app. dismissed, 397 U.S. 1105 (1970) (Sherman Act).

The text of the Safety Act contains no restriction on the Secretary's discretion to settle investigations where there has been no final determination. 15 U.S.C. §1412(b). 8/

8/ Section 112 of the Safety Act, 15 U.S.C. 1401, authorizes the Secretary to conduct any investigation necessary to carry out the purposes of the Act, and section 110, 15 U.S.C § 1399, authorizes the Secretary in appropriate cases to recommend enforcement actions to the Attorney General. Neither these sections, nor any other contain any relevant limitation on the conduct of such investigations. CFAS does not contest (Footnote continued on next page)

Similarly, the legislative history of the Safety Act discloses no Congressional intent to restrict the Secretary's discretion to settle defect cases. To the contrary, "the reason the word 'unreasonable' was put in [the definition of motor vehicle safety] is that we hope there will be some common sense applied to this." Hearings on Traffic Safety Before the Senate Commerce Committee, 89th Cong. 2d Sess. 56 (1966), cited in United States v. General Motors Corp. (wheels) 518 F.2d 435, n.69.

CFAS' argument presumes that a vehicle contains a safety-related defect merely because the agency initiates a defect investigation. This equation of an investigation with a determination of a defect is plainly improper, for it would prohibit the agency from terminating an investigation, even if it found no basis to proceed. As one might expect, most investigations are terminated without requiring any action on the part of the manufacturer. Moreover, in a number of instances, including the Pinto fuel tank and Firestone tire matters cited by CFAS, the agency exercised its discretion to terminate the investigation upon the agreement of the manufacturer to provide repair or replacement for some but not all of the vehicles or equipment that were the subject of the original investigation. Bradford Aff. ¶ 5, JA at 336.

8/ (cont'd) the Secretary's authority to settle investigations, but does argue that the Secretary was permitted to settle only for full statutory remedies. [Br. at 30.] The authority to settle is a necessary concomitant of the power to investigate or prosecute. Action on Safety and Health v. F.T.C., 498 F.2d 757 (D.C. Cir. 1974). Accord, Local 282, International Brotherhood of Teamsters v. NLRB, 339 F.2d 795, 799 (2d Cir. 1964).

The Ford transmission investigation, in contrast to every previous NHTSA investigation terminated by a settlement agreement, attained a substantial benefit for all owners of vehicles covered by the agency's investigation. Such a result is entirely consistent with the duty of the Secretary to enforce the Safety Act and well within the bounds of his discretion.

C. The Settlement Agreement Was Not Arbitrary And Capricious, Nor Was It An Abuse Of The Secretary's Discretion

The settlement agreement can only be set aside if arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law. Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 416 (1971). As we have demonstrated, the Safety Act does not preclude settlements of this kind. When examined in the light of the entire administrative record, the agreement is clearly seen to be a rational exercise of the Secretary's discretion.

CFAS argues that the settlement agreement is arbitrary and capricious because it "disregards the unequivocal recommendation of the NHTSA Administrator and her expert staff," CFAS Brief at 2, and because the warning label and notification program cannot reduce the incidence of park-to-reverse accidents. Id. at 37. Although the Secretary is not obligated to accept the NHTSA Administrator's recommendations, it is not true that her recommendations were unequivocal or that her views were disregarded in this instance. Moreover, there is no basis on the record for a finding that the Secretary was arbitrary or capricous because he concluded that the notification letter and warning label program could substantially reduce the risk of harm to the public.

1. The Standard of Review

Under the Administrative Procedure Act ("APA"), 5 U.S.C. § 706, an agency's action can be set aside only if "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." This standard of review is narrow. "The Court is not empowered to substitute its judgment for that of the agency," Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. at 416, and must affirm an agency action if there is a rational basis for the agency's decision. Ethyl Corp. v. Environmental Protection Agency, 541 F.2d 1, 34 (D.C. Cir. 1976) (en banc), cert. denied, 426 U.S. 941 (1976); Davis Walker Co. v. Blumenthal, 460 F. Supp 283, 295 (D.D.C. 1978).

As we have previously discussed, the Safety Act clearly and necessarily confers a broad grant of discretion on the Secretary in his handling of defect investigations. Thus, "[i]t is enough that the Administrator has acted within the statutory bounds of his authority, and that his choice among the possible alternative[s] . . . is one which a rational person could have made." Federal Security Adm'r. v. Quaker Oats Co., 318 U.S. 218, 233 (1943).

Moreover, courts generally favor settlements, and give considerable deference to an agency's discretion in formulating the terms of such agreements. See, e.g., United States v. Allegheny-Ludlum Industries, Inc., 517 F.2d 826 (5th Cir. 1975);

International Ladies' Garment Workers Union, Local 415-475 v. NLRB, 501 F.2d 823, 832 (D.C. Cir. 1974).

CFAS argued below, and the District Court agreed, that judicial review of the agency's decision "is to be based on the full administrative record that was before the Secretary at the time he made his decision." *Citizens to Preserve Overton Park v. Volpe*, *supra*, at 420. However, the District Court also found that its review was "limited to ensuring that the [agency] has adequately explained the facts and policy concerns it relied on and to satisfying ourselves that those facts have some basis in the record." Slip op. at 9, J.A. 25, citing *N.R.D.C., Inc. v. S.E.C.*, 606 F.2d 1051, 1053 (D.C. Cir. 1979). 9/ Even those cases cited by CFAS to support its assertion that greater judicial scrutiny is required when an agency action involves health and safety issues (CFAS Brief at 33) hold that substantial deference to agency discretion is generally required and that review of agency action is to be limited to ensuring "that full consideration has been given

---

9/ This is essentially in accord with the decision in *Dunlop v. Bachowski*, 421 U.S. 560 (1975), in which the Supreme Court found that the scope of review of the Secretary of Labor's decision not to sue was extremely narrow.

> "Except in what must be the rare case, the court's review should be confined to examination of the [Secretary's statement of reasons for his decision], and the determination whether the statement, without more, evidences that the Secretary's decision is so irrational as to constitute the decision arbitrary and capricious. Thus, review may not extend to cognizance or trial of a complaining [union] member's challenges to the Secretary's conclusion." *Id*. at 572-573.

to all significant factors." 10/ *Community Nutrition Institute v. Bergland*, 493 F. Supp. 488, 492 (D.D.C. 1980). *See also*, *Wellford v. Ruckelshaus*, 439 F.2d 598 (D.C. Cir. 1971), in which the court's remand to the agency was based on its conclusion that the Secretary had failed to consider certain factors in making its decision. Moreover, these cases do not change the principle that a court must not substitute its judgment for the agency's. *Community Nutrition Institute v. Bergland*, *supra*.

10/ *National Ass'n. of Farmworkers v. Marshall*, 628 F.2d 604 (D.C. Cir. 1980), is inapposite, because of striking differences between the statutory schemes involved. This court in *Farmworkers* emphasized that the statutory scheme was unique in imposing stringent limitations on the Secretary of Labor's authority to grant waivers of child labor laws:

> "Apparently, the district court believed the requirements set by statute impossible to fulfill. But if there ever were an instance in which Congress did not delegate discretion to an agency to establish less than absolute safety standards, this might be that case." *Id.* at 619.

Thus, in *Farmworkers*, this court applied the ordinary principles of statutory construction rather than requiring special, more stringent judicial scrutiny. *Environmental Defense Fund v. Ruckelshaus*, 439 F.2d 584 (D.C. Cir. 1971), also cited by CFAS as a basis for a more stringent standard of review is likewise a case that involved construction of statutory language rather than a different standard of review. In *NRDC v. SEC*, 389 F. Supp. 689 (D.D.C. 1974), the District Court, noting the vigilance of judicial supervision of agency actions concerning environmental protection, held that the SEC was required to effectuate NEPA to the fullest extent possible. (*Id.* at 700). This court reversed, holding that while it "would exercise relatively careful scrutiny to ensure that the [agency] has scrupulously followed NEPA procedures," its "review of the agency's factual, and particularly its policy determinations will perforce be a narrow one, limited to ensuring that the [agency] has adequately explained the facts and policy concerns it relied on and to satisfy ourselves that those facts have some basis in the record." *N.R.D.C., Inc. v. S.E.C.*, 606 F.2d, 1031, 1053 (D.C. Cir. 1979).

2. The Agreement Was A Rational Exercise Of The Secretary's Discretion

Examination of the record shows that the transmission investigation was difficult and complex; that problems of proof existed which cast doubt on the agency's ability to prevail in a de novo review in the District Court, in the event of a final defect determination; and that prolonged enforcement litigation was likely to follow any final defect determination. These factors, coupled with the fact that the instructions contained in the notification letters and warning labels, if heeded, would substantially reduce the possibility of harm, support the conclusion that the Secretary's decision to settle the investigation was rational.

The investigative file contains numerous reports that the automatic transmission in Ford vehicles apparently failed to engage or hold in park. ODI Phase I Report 15; JA 52. However, that file also contains reports of similar events occurring in vehicles manufactured by General Motors Corporation, Chrysler Corporation, and others. Id. Moreover, the file contains little information as to whether the driver had successfully placed the gearshift lever in the "P" position prior to the reported failure of the vehicle to engage or hold "park." Examination of vehicles that had reportedly malfunctioned indicated that, in most instances, no park system component was worn or damaged, and that the park system subsequently functioned properly. ODI Phase I Report 27, JA 14. Ford argued that these undisputed facts showed that the problem was one of drivers' failing to properly engage park and that the apparently higher rate of reported failures in Ford vehicles was due solely to the unprecedented amount of adverse publicity concerning Ford vehicles. JA 139, 218.

Thus, the facts of the transmission investigation are not as compelling as CFAS would have this court believe. It is clear, however, that had the Secretary ordered Ford to provide a mechanical repair, the Department and NHTSA would have been embroiled in protracted litigation against Ford, with an uncertain result. Ford stated throughout the investigation that it would seek judicial review of any agency decision to order a mechanical repair and, at the time of the public proceeding in August, 1980, filed a lawsuit seeking, in essence, pre-enforcement judicial review of the investigation. Thus, any relief ultimately obtained would have been delayed several years, by which time a substantial number of the vehicles covered by the investigation would have ended their useful lives. Bradford Aff. ¶ 10, JA 335.

The record also shows that many of the reported serious accidents allegedly occurred when an unattended vehicle moved in reverse with its engine running. ODI Phase I Report 14, JA 51. Common sense indicates that such accidents would not have occurred if the drivers had turned the engine off before leaving their vehicles. Similarly, many unpowered "roll-away" accidents in which a parked car rolls down a hill, can be avoided if the driver sets the parking brake. Finally, NHTSA's engineering studies, e.g., ODI Phase I Report 79, JA 116, which detail the role of the gear shift linkage in holding the transmission in the park position, form the basis for concluding that proper maintenance of the linkage and careful operation of the gear selector can also reduce the possibility of harm. Bradford Aff. ¶ 16, JA 338. Thus, contrary to CFAS' assertions, the administrative record supports the Secretary's conclusion that the instructions in the notice letter and warning label would, if followed, "reduce significantly the incidence of accident, death, and injury resulting from inadvertent rearward movement." JA 315.

CFAS argues that the agreement should be set aside because the warning label cannot prevent all future accidents. (CFAS Brief 2, 31). However, no remedy, including that sought by CFAS can prevent all future accidents of this type. It is undisputed that similar accidents have occurred involving other manufacturers' vehicles. Moreover, even if a device could be invented that was totally effective in preventing such accidents, the experience in prior recall campaigns is that only about half of the vehicles are ever brought in by their owners for repair. JA 293.

In light of these considerations, the Secretary's decision to accept a settlement agreement providing for prompt distribution, to all owners of the vehicles under investigation, of notification letters and warning labels, which, if followed, would substantially reduce the possibility of harm, was rational and well within the bounds of his discretion.

3. The Secretary Was Not Required To Conduct A Test Of The Effectiveness Of The Notification And Warning Label Program Prior To Agreeing To The Settlement

CFAS has argued (CFAS Brief, 38) that the Secretary's decision was arbitrary and capricious because he did not conduct a test of the effectiveness of the notification and warning label program prior to settling the investigation. It further argues that the warning label program cannot rectify the alleged defects in the transmissions. CFAS Brief, 39.

During the course of the investigation, both NHTSA and Ford examined the possibility of conducting human factors studies to compare the performance of Ford and non-Ford vehicles. Each abandoned this approach because preliminary studies indicated that a massive experiment, with as many as one million drivers operating vehicles over a period of a year would be required to generate statistically significant differences. ODI Phase I Report 95, JA 132, Appendix B to this Brief. A study of the type suggested by plaintiffs, to compare the rate of accidents in Ford vehicles with warning labels to the rate of accidents in Ford vehicles without warning labels, would have required a similar investment of resources and time. Given that one of the advantages of the settlement agreement was its immediate benefit to the public, the Secretary would have been irrational, had he held up the agreement while such a study was done. Instead, the Secretary chose the prudent course of obtaining the immediate benefit of the notification and warning label program, while reserving the right to take such further action should the circumstances warrant it. 11/

Moreover, even where the action taken by the manufacturer is the mechanical remedy of a safety-related defect pursuant to section 154, 15 U.S.C. 1414, the Safety Act does not require advance Government approval of a manufacturer's proposed remedy. In fact, the legislative history of section 156 establishes that Congress intended that there be no such prior approval. Instead, section 156 of the Safety Act, 15 U.S.C. §1416, provides for review of the reasonableness of a manufacturer's remedy, either on the Secretary's motion, or upon petition of any interested person. 12/ This procedure is evidence that Congress placed substantial value on the prompt remedy of a problem, by providing for a subsequent review of the adequacy of the remedy rather than prior testing and approval by the Secretary.

CFAS's argument that the notification and warning label program does not alter the components in the Ford transmissions is irrelevant because, as we have previously shown, the Secretary is not required to order a mechanical remedy. The

---

11/ This Court has found that Congress intended a common sense approach in the handling of defect matters. United States v. General Motors Corp. (Wheels), supra, 518 F.2d at 435.

12/ The Senate version of what was to become section 156 contained a provision which would have required Secretarial approval of a manufacturer's remedy plan. The Conference Committee specifically rejected this language in favor of the House Bill, which contained language essentially the same as that eventually adopted. H.R. Rep. No. 93-1452, 93d. Cong. 2d. Sess. 32-33 (1974).

question is whether the Secretary had a rational basis for accepting a program that could reduce the possibility of accidents, injury or death. As we have already demonstrated, the simple precautions recommended in the warning letter and label can prevent nearly all serious accidents. Accordingly, the settlement with Ford was reasonable.

4. The Secretary Was Not Required To Adopt The Recommendation Of The NHTSA Administrator

CFAS argues that the Secretary's action was arbitrary because his decision "disregard[ed] entirely the unequivocal recommendation of the NHTSA Administrator." However, the Safety Act specifically grants the authority to enforce its provisions to the Secretary. In urging that the Secretary is bound to follow the analyses, opinions and recommendations of the Administrator and lower agency staff, CFAS would have this Court ignore the decisionmaking role that the Act reserves to the Secretary. 13/

When the head of a government agency retains general authority over a subordinate, a delegation of authority to the subordinate does not deprive the superior of the power to review and reverse actions of the lesser official which have not

---

13/ The Department of Transportation Act, 49 U.S.C. § 1651 *et. seq.*, ("The DOT Act") transferred from the Secretary of Commerce and vested in the Secretary of Transportation, ("the Secretary"), "all functions, powers, and duties . . . under . . . [t]he National Traffic and Motor Vehicle Safety Act of 1966" 49 U.S.C. § 1655(a)(6)(A). The Secretary delegated to the Administrator the authority to administer all of the Safety Act provisions, 49 CFR § 1.50(a), but reserved the authority generally to supervise and specifically to direct the actions of the Administrator. 49 CFR §§ 1.23(a), 1.42.

become final or binding on the Department, Chevron Oil Co. v. Andrus, 588 F. 2d. 1383, (5th Cir. 1979), citing Knight v. United Land Association, 142 U.S. 161 (1891).

Moreover, the Secretary did not "entirely disregard" the recommendation of the NHTSA Administrator, for to do so would have been to terminate the investigation without seeking any benefit for the public. The Secretary provided substantial benefit to the public, in part along lines suggested by the NHTSA Administrator. The Administrator's recommendation was to order the mechanical repair of 10 million vehicles and to enter into negotiations with Ford, seeking the installation of a warning device 14/ in 6 million vehicles. The settlement agreement did not require the addition of the mechanical device, but it did provide a warning, in the form of the label's instructions, for all 23 million vehicles under investigation, including seven million 1970-1972 vehicles beyond the eight-year statutory limit on the requirement to remedy vehicles, 15 U.S.C. § 1414(a)(2)(B)(4).

5. The Secretary's Statement Of Reason Is Adequate

CFAS successfully argued below that review of the Secretary's decision should be based on the entire administrative record, rather than being confined to a narrow examination of the agency's statement of reasons. It now asks this court to ignore the

---

14/ By CFAS' definition, this warning device would not have been a remedy for the alleged problem in this group of vehicles, which was described as a tendency to bind between reverse and park gear.

administrative record and set aside the settlement agreement because the Secretary allegedly failed to furnish an adequate statement of the reasons for his actions. The Secretary's statement of reasons is sufficient to allow a reviewing court to determine the basis for his decision. The Government submits that where review is conducted on an administrative record, which is available to the parties and the public, it would be superfluous to require a detailed discussion of the underlying facts. See Camp v. Pitts, 411 U.S. 138 (1973).

Congress specified informal procedures for agency defect determinations in section 152 of the Safety Act, 15 U.S.C. § 1412, because it believed that an informal proceeding would most effectively ensure the expeditious resolution of matters involving questions of safety-related defects. Ford Motor Company v. Coleman, 402 F. Supp. 475, 480 n. 12 (D.C. 1975) (three judge court); aff'd mem., 425 U.S. 727 (1976), citing H.R. Rep. No. 93-1191, 93rd Cong., 2d. Sess. 17 (1974). Certainly, settlement of an investigation cannot be held to a higher standard of formality than the rendering of final defect determinations.

In informal proceedings an agency need not prepare formal findings and reasons for its decision. Citizens to Preserve Overton Park, supra, 401 U.S. at 417; Estate of French v. Federal Energy Regulatory Commission, 603 F. 2d. 1158 (5th Cir. 1979). Thus, in Camp v. Pitts, 411 U.S. at 143, the Supreme Court held that the Comptroller General's explanation, while concededly "curt", was nevertheless sufficient, since it indicated the determinative reason for his decision. See also Estate of French v. F.E.R.C., supra, which held that where the court had before it a record of the basis for the agency's decision, the agency's statement giving a general reason for the action taken was sufficient.

The Secretary's letter of December 30, 1980, which embodies the settlement agreement, states the determinitive reason why the Secretary agreed to terminate the investigation:

> "[W]e believe Ford's sending of the proposed notification letter and safety label . . . would adequately address our motor vehicle safety concerns at this time. We believe that this action would be likely to reduce significantly the incidence of accident, injury, and death resulting from unexpected rearward vehicle movement after the driver has attempted to shift the gear selector to "P" (Park)." JA 315.

This explanation, evaluated in light of the public record, is an adequate statement of tne basis of the Secretary's action.

Dunlop v. Bachowski, 421 U.S. 560 (1975), is not applicable on the issue of the adequacy of the statement of reasons in this case, because in Dunlop the court did not have an administrative record to assist it in reviewing the Secretary's action. Here the District Court, the parties, and the public have available to them the entire 382 cubic feet of documents which comprise the agency's record. Nonetheless, the December 30 letter meets the standard set in Dunlop since it is "adequate to enable the court to determine whether the Secretary's decision was reached for an impermissible reason or for no reason at all." 15/ *Dunlop v. Bachowski*, *supra* at 571-572.

CONCLUSION

For the foregoing reasons, the District Court's order granting summary judgment should be affirmed.

Respectfully submitted,

Frank Berndt
  Chief Counsel

David W. Allen
  Assistant Chief Counsel

Enid Rubenstein

Enid Rubenstein
Bruce C. Buckheit
Eileen T. Leahy
  Attorneys
National Highway Traffic
  Safety Administration
400 7th Street, S.W.
Washington, D.C. 20590
(Tel. 202-426-9511)

January 28, 1982

15/ In any event, failure to provide an adequate statement of reasons is not sufficient reason to set aside the Secretary's decision. As reflected in both *Camp v. Pitts* and *Dunlop v. Bachowski*, if the Court finds the Secretary's statement of reasons inadequate, the proper course is to remand to the agency in order to afford the Secretary an "opportunity to supplement his statement." 421 U.S. at 559, *see also*, 411 U.S. at 142-143.

APPENDIX A

STATUTES

15 U.S.C. § 1391 (1), (11):

As used in this subchapter-

(1) "Motor vehicle safety" means the performance of motor vehicles or motor vehicle equipment in such a manner that the public is protected against unreasonable risk of accidents occurring as a result of the design, construction or performance of motor vehicles and is also protected against unreasonable risk of death or injury to persons in the event accidents do occur and includes nonoperational safety of such vehicles.

* * * * *

(11) "Defect" includes any defect in performance, construction, components, or materials in motor vehicles or motor vehicle equipment.

15 U.S.C. § 1397(a),(b)(2):

(a)(1) No person shall-

* * * * *

(D) fail-

(i) to furnish notification,
(ii) to remedy any defect or failure to comply, or
(iii) to maintain records,
as required by part B of this title; or fail to comply with any order or other requirement applicable to any manufacturer, distributor, or dealer pursuant to such part B;

15 U.S.C. § 1401 (a)(1)

(a) The Secretary is authorized to conduct any inspection or investigation-

(1) which may be necessary to enforce this title or any rules, regulations, or orders issued thereunder, or

(2) which relates to the facts, circumstances, conditions, and causes of any motor vehicle accident and which is for the purposes of carrying out his functions under this Act.

15 U.S.C. § 1411

If a manufacturer-

(1) obtains knowledge that any motor vehicle or item of replacement equipment manufactured by him contains a defect and determines in good faith that such defect relates to motor vehicle safety; or

(2) determines in good faith that such vehicle or item of replacement equipment does not comply with an applicable Federal motor vehicle safety standard prescribed pursuant to section 103 of this Act; he shall furnish notification to the Secretary and to owners, purchases, and dealers, in accordance with section 153, and he shall remedy the defect or failure to comply in accordance with section 154.

15 U.S.C. § 1412 (a), (b)

(a) If through testing, inspection, investigation, or research carried out pursuant to this Act, or examination of communications under section 158(a)(1), or otherwise, the Secretary determines that any motor vehicle or item of replacement equipment-

(1) does not comply with an applicable Federal motor vehicle safety standard prescribed pursuant to section 103 of this Act; or

(2) contains a defect which relates to motor vehicle safety;

he shall immediately notify the manufacturer of such motor vehicle or item of replacement equipment of such determination, and shall publish notice of such determination in the Federal Register. The notification to the manufacturer shall include all information upon which the determination of the Secretary is based. Such notification (including such information) shall be available to any interested person, subject to section 158(a)(2)(B). The Secretary shall afford such manufacturer an opportunity to present data, views, and arguments to establish that there is no defect or failure to comply or that the alleged defect does not affect motor vehicle safety; and shall afford other interested persons an opportunity to present data, views, and arguments respecting the determination of the Secretary.

(b) If, after such presentations by the manufacturer and interested persons, the Secretary determines that such vehicle or item of replacement equipment does not comply with an applicable Federal motor vehicle safety standard, or contains a defect which relates to motor vehicle safety, the Secretary shall order the manufacturer (1) to furnish notification respecting such vehicle or item of replacement equipment to owners, purchasers, and dealers in accordance with section 153, and (2) to remedy such defect or failure to comply in accordance with section 154.

15 U.S.C. § 1414 (a)(1), (a)(2)(A), (a)(2)(B)(4)

(a)(1) If notification is required under section 151 or by an order under section 152(b) with respect to any motor vehicle or item of replacement equipment which fails to comply with an applicable Federal motor vehicle safety standard or contains a defect which relates to motor vehicle safety, then the manufacturer of each such motor vehicle or item of replacement equipment presented for remedy pursuant to such notification shall cause such defect or failure to comply in such motor vehicle or such item of replacement equipment to be remedied without charge. In the case of notification required by an order under section 152(b), the preceding sentence shall not apply during any period during which enforcement of the order has been restrained in an action to which section 155 (a) applies or if such order has been set aside in such an action.

(2)(A) In the case of a motor vehicle presented for remedy pursuant to such notification, the manufacturer (subject to subsection (b) of this section) shall cause the vehicle to be remedied by whichever of the following means he elects:

(i) By repairing such vehicle.

(ii) By replacing such motor vehicle without charge with an identical or reasonable equivalent vehicle.

(iii) By refunding the purchase price of such motor vehicle in full, less a reasonable allowance for depreciation.

* * * * *

(4) The requirement of this section that remedy be provided without charge shall not apply if the motor vehicle or item of replacement equipment was purchased by the first purchaser more than 8 calendar years (3 calendar years in the case of a tire, including an original equpment tire) before (A) notification respecting the defect or failure to comply is furnished pursuant to section 151, or (B) the Secretary orders such notification under section 152, whichever is earlier.

15 U.S.C. § 1416

Upon petition of any interested person or on his own motion, the Secretary may hold a hearing in which any interested person (including a manufacturer) may make oral (as well as written) presentations of data, views, and arguments on the question of whether a manufacturer has reasonably met his obligation to notify under section 151 or 152, and to remedy a defect or failure to comply under section 154. If the Secretary determines the manufacturer has not reasonably met such obligation, he shall order the manufacturer to take specified action to comply with such obligation; and, in addition, the Secretary may take any other action authorized by this title.

5-78-40

ATTACHMENT I-B
CB-02
December 17, 1978

August 29, 1978

Mr. John Versace

Subject: Transmission Selector Lever

The Ford Motor Company transmission lever designs were compared with various human factors recommendations for control forces and movement. No data was found which suggests obvious human factors deficiencies in the Ford designs. Results from our survey of human factors recommendations are summarized in Appendix I.

To determine if the Ford transmission levers differ in some subtle way from other designs, human factors tests would have to be conducted. These tests should be conducted in two phases.

PHASE I

Objective. This phase would be to determine if mispositioning of the shift lever occurs more frequently in Ford than in other cars.

Principal Response Measure. The percentage of drivers who exit from test vehicles with the gear selector lever not fully engaged in the park position while the engine is running.

Abbreviated Method. The transmission lever position and pawl engagement will be measured (by concealed and silent instrumentation) as each subject-driver exits the test car to insert a pass-card or coin-token to open a barrier-gate in a parking structure. A false curb will force drivers to stop slightly out of reach of the pass-card or coin-token box, requiring them to put the car in park and leave the driver's seat momentarily to insert the token or card. (The hydraulic brakes and concealed instrumentation will be silently actuated by the door-ajar circuit when the driver is outside the car.) Each driver will be required to find and maneuver into a predetermined number of reserved parking spaces within the parking structure where he will exit the vehicle with the engine turned off. A number of parking maneuvers within the structure will be used to systematically investigate familiarity with the car before passing through the barrier gate to use the token or pass-card for a second time. A sufficient sample of each car make will be used to represent production variations.

Presentation of Findings. Table 1 shows the format to be used in presenting results.

Table 1

NUMBER OF DRIVERS

Manufacturer	Transmission Lever Fully Engaged		No. of Tests Per Car Make
	YES	NO	Subtotal
Ford			n_F
Non-Ford			n_N

Ability of Test to Detect Defects

The ability of this test to detect accident-causing differences between Ford and Non-Ford shift levers depends on three (3) important factors which define minimum sample sizes (n_F and n_N in the last column of Table 1.)

1. Parking Frequency - U.S. drivers put their automatic transmission into park about 90 billion times each year.

   NOTE: The Federal Highway Administration (FHWA) and MVMA estimate that passenger cars make approximately 944 one-way trips per year (Ref. 11). Ninety-two (92%) of 104,857,400 registered cars (Ref. 12) had automatic transmissions between 1972 and 1977 (Ref. 13). This multiplies out to about 91,000,000,000 parking operations per year.

2. Number of U.S. Drivers who Exit Cars while Engine is Running. If U.S. drivers leave their cars in park gear with the engine running once a year, there will be approximately 24,000,000 unattended Ford products each year.

   NOTE: On the average, U.S. passenger cars make 944 one-way trips each year. Approximately one-half of these are assumed to be home bound. If cars are left unattended with the engine on to open a garage door once every twenty (20) home bound trips, then 2,275,000,000 vehicles are left unattended with engines on each year.

2. Number of U.S. Drivers who Exit Cars while Engine is Running. (Cont'd.)

If 25% are Ford products, then 569,000,000 Fords are left unattended each year (or 24 times out of 944 one-way trips.) If it is assumed that Fords are left unattended only once each year, there will be 24,117,202 unattended Fords.

3. The Actual Frequency of Mispositioned Shift Levers. The ability of the test to find differences between the number of mispositioned levers in Ford and Non-Ford cars also depends on:

   a. The actual number of mispositioned shift levers each year by car make

   b. The experimenters desired level of statistical confidence that will show the test results are not misleading

Tables 2a through 2d show how many drivers must be tested per car for various combinations of these important factors. (Refs. 14, 15).

Table 2a

NUMBER OF PEOPLE WHO MUST BE TESTED PER CAR
(TO DETECT 10,000 UNREPORTED INCIDENTS/YR.)

		α * Probability Test Will Show a Difference When There Isn't One		Assuming (Annual Rates)
β		.001	.05	
Probability of Showing Cars Don't Differ When They Do	.001	3794	2237	1. The actual frequency of mispositioning shift levers: Ford 100,000 Non-Ford 0
	.005	3192	1770	
	.01	2926	1534	
	.05	2237	1080	2. U.S. drivers exit cars with engine on once a year.
	.10	1901	853	

*Statistical significance.

BEST COPY AVAILABLE

Table 2b

NUMBER OF PEOPLE WHO MUST BE TESTED PER CAR

		α Probability Test Will Show a Difference When There Isn't One		Assuming (Annual Rates)
	β	.001	.05	
Probability of Showing Cars Don't Differ When They Do	.001	379,449	223,725	1. The actual frequency of mispositioning shift levers: Ford 1,000 Non-Ford 0 2. U.S. drivers exit cars with engine on once a year.
	.005	319,219	178,081	
	.01	292,676	158,401	
	.05	223,725	108,898	
	.10	190,092	85,847	

Table 2c

NUMBER OF PEOPLE WHO MUST BE TESTED PER CAR

		α Probability Test Will Show a Difference When There Isn't One		Assuming (Annual Rates)
	β	.001	.05	
Probability of Showing Cars Don't Differ When They Do	.001	1,897,000	1,113,000	1. The actual frequency of mispositioning shift levers: Ford 1,000 Non-Ford 0 2. U.S. drivers exit cars with engine on five (5) times a year.
	.005	1,596,000	890,000	
	.01	1,463,000	792,000	
	.05	1,118,000	544,000	
	.10	950,000	429,000	

Table 2d

NUMBER OF PEOPLE WHO MUST BE TESTED PER CAR

		α Probability Test Will Show a Difference When There Isn't One		Assuming (Annual Rates)
β		.001	.05	
	.001	7,589,000	4,474,000	1. The actual frequency of mispositioning shift levers: Ford 1,000 Non-Ford 1/4 Ford Rate 2. U.S. drivers exit cars with engine on five (5) times a year.
Probability of Showing Cars Don't Differ When They Do	.005	6,384,000	3,561,000	
	.01	5,853,585	3,168,000	
	.05	4,474,000	2,177,000	
	.10	3,001,000	1,717,000	

The fact that many people will have to be tested, even if the rate of lever mispositionings is over 100,000 times more common in Ford than Non-Ford products, suggests that some other performance measure such as rating scales, might be more efficient. A rating scale would at least allow us to estimate the seriousness of some problem on each test trial. Unfortunately, we are not informed enough at this point to know what questions could be asked or what causative effects we are looking for.

Another possible response measure would be to ask subject-drivers to rank the gear shift designs in terms of force, or travel, or overall preference. However, preference rankings may have little to do with the factors which cause gear shift levers to be mispositioned, and could certainly not be used to estimate the relative frequencies with which drivers misposition Ford versus Non-Ford shift levers in the field.

Most rating and ranking methods cannot be applied without fully informing the test respondents about which properties of the system are being evaluated. If these methods were applied in the Phase I experiment, all participants would have to be told that mispositioning of the shift lever was the pertinent factor under evaluation. It is unlikely that any alerted respondent would fail to properly detent shift levers which are well within the established human factors guidelines for hand controls. This would be a case where the research methods destroy the phenomenon being measured.

We have concluded that the percentage of unalerted drivers who exit cars without properly engaging the parking pawl is the proper response measure for determining if Ford products have a disproportionately large number of lever mispositioning in the field.

PHASE II

Phase II would be conducted if Phase I results reliably showed that Ford shift levers are mispositioned more often than Non-Ford levers.

Objective. This phase would be conducted to determine which mechanical properties of the shift lever design contribute to driver mispositioning of the lever.

Principal Response Measure. The percentage of drivers who exit from test vehicles with the gear selector lever not fully engaged in the park position while the engine is running.

Independent Variables (Treatments).

VARIABLES	NUMBER OF LEVELS
1. Vehicles	Ford only
2. Linkage Adjustment	Design, 5th, 95th percentile
3. Friction in control	Median, 5th, 95th percentile
4. Engine Idle Speed	Cold start, warm
5. Lever design	Console mounted, column mounted
6. Detent separation	Design, Design + 20%

Total Number of Experimental Treatments = 72.

Abbreviated Method. The method used in Phase I would be repeated with the following exceptions.

(a) Drivers were required to practice parking before the second test was conducted in Phase I. Practice would be eliminated in Phase II if it were found to be unrelated to the number of driver errors.

(b) Non-Ford products will not be tested.

The detailed experimental procedure for Phase II would be developed after Phase I in order to benefit from knowledge gained in the first test program. The efficiency of the design will be important since there are seventy-two (72) combinations of independent variables each requiring several hundred or thousand test subjects.

L. M. Forbes

L. M. Forbes

J. F. Meldrum

J. F. Meldrum

APPENDIX I

CONTROL FORCES

A review of human factors and Ford Motor Company specifications for maximum control forces suggest that Ford transmission shift levers are designed within recommended levels.

Table 1A

MAXIMUM CONTROL FORCES (TO MOVE BETWEEN DETENTS)

Reference Number	Source of Recommendation	Maximum Force - lb -
1.	GPAS System: Transmission (GEN 7.00)	
	All except C-6 (into park)	3.5 to 8.5 lb
	C-6 (into park)	3.5 to 11.0
2.	MIL - STD-1472B, 31 Dec. 1974; MIL-HDBK-759, 12 March 1975	
	Push and Pull	30 lb
	Right and left	20
3.	NHTSA Research Contract FH-11-6907 "Instrument and Control Location"-- July 1969	
	Hand Operated Levers	30 lb
4.	Human Factors Engineering, E. J. McCormick	
	Levers, Fore-Aft (one hand)	30-50 lb
	Levers, Lateral (one hand)	20
5.	Human Engineering Guide for Equipment Design, Woodson, 1956	
	Gear Shift Levers (Finger or grasp)	12 lb
	Hand controls	30-40
6.	Human Engineering Guide to Equipment Design, Army-Navy	
	Hand Grasp Controls	20-100 lb
7.	Automotive Engineering Society (Japan)	
	Shift Lever ("best feel" Ratings)	
	. Spring force	1.1 to 11.0 lb
	. Dragging force	1.1 to 6.6
	. Weight	1.1 to 5.5

CONTROL TRAVEL AND DETENTS

Published Human Factors recommendations concerning maximum hand level travel are listed below. These apply to the total travel of the shift level between low and park detents. When available, minimum separations between detents are also shown.

Table 2A

CONTROL TRAVEL AND DETENTS

Reference Number (See Table 1A)	Control Travel Minimum	Control Travel Maximum	Detents Minimum Separation
1.	None	None	None
2.	None None	14" (Push-Pull) 33" (Lateral)	None
3.	None	None	None
4.	None	14" (Push-Pull) 38" (Lateral)	None
5.	None	None	2"
6.	None	14"-33" (or 90°)	2"*
7.	None	None	None

*If lever arm is longer than 6 inches. However, less than 2-inches detent separation is allowed when the lever also has a visual indicator.

DETENT "FEEL"

A study at MIT (Ref. 8) confirmed earlier human factors research (Ref. 9) that a 10% to 20% change in control inertia or friction will be detected 75% of the time. Little else was found in the published literature which relates to detent feel.

FEDERAL STANDARDS AND SAE RECOMMENDATIONS

FMVSS 102, 'Transmission Shift Lever Sequence', and SAE Recommended Practice J915, "Manual Control Sequence for Automatic Transmission" (Ref. 10) contained no recommendations for lever forces, movements or detent feel.

References

1. General Product Acceptance Specification GEN 7.00-7.05 System: Transmission.

2. Military Standard. MIL-STD-1472B, 31 December 1974 "Human Engineering Design Criteria for Military Systems, Equipment and Facilities." And

   Military Standard Handbook, MIL-HDBK-759. 12 March 1975. "Human Factors Engineering Design for Army Materiel."

3. "Instrument and Control Location Accessibility and Identification," NHTSA Contract FH-11-690 prepared for U.S. Department of Transportation by Man Factors, Inc., San Diego, California, July 1969.

4. "Design of Controls" by J. Ely, R. Thomson and J. Orlansky (from Human Factors Engineering book by E. J. McCormick, Purdue University)

5. "Human Engineering Guide for Equipment Designers" (2nd Edition) by W. Woodson and D. Conover, Berkeley, California 1966.

6. "Human Engineering Guide to Equipment Design" (Joint Army-Navy-Air Force Steering Committee) 1963 Edition by Morgan Cook, Chapanis and Lund. 1972 Edition VanCott and Kinkade.

7. Bioengineering Approach to Automobile Manufacture by Matsuno, Mimura, Yamada, Kaida, et al. Japanese Journal of Ergonomics 3, No. 3: pp 197-205. (1967)

8. Knowles, W. B. and T. B. Sheridan, The "Feel" of Rotary Controls: Friction and Inertia. Human Factors, June, 1966.

9. Woodruff, B., and N. Helson, Torque: A New Dimension in Tactile-kinesthetic Sensitivity, Amer. J. Psychol., 1965, 78, 271-277.

10. SAE Recommended Practice J915. "Manual Control Sequence for Automatic Transmission" SAE handbook.

11. U.S. DOT, Federal Highway Administration, Nationwide Personal Study, Report No. 5, Nov. 1973 and MVMA Motor Facts and Figures, 1975.

12. Highway Statistics, Federal Highway Administration; U.S. DOT 1974, Table VM-1, Nov. 1975, page 67.

13. MVMA Motor Vehicle Facts and Figures, 1975 page 19, 1976 page 13.

14. Natrella, Mary Gibbons, Experimental Statistics, National Bureau of Standards Handbook 91, U.S. Department of Commerce, August 1, 1963, p 8-20, 8-21.

15. Stewart, J. R., S. Lemeshow and D. W. Hosmer. Sample Size Determination for Detecting Differences in Small Proportions, Biostatistics Technical Reports, Biostatistics-Epidemiology Program Series Nos. 77-11 and 77-12, School of Health Sciences, University of Massachusetts.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of January, 1982, I have served a copy of the foregoing Appellees' Brief by delivering a copy to Barbara L. Bezdek.

Enid Rubenstein

Enid Rubenstein
Attorney for Appellees

Attachment K, No. 1

JAN 27 1983

The Honorable Timothy E. Wirth
Chairman, Subcommittee on Telecommunications,
  Consumer Protection, and Finance
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

In accordance with your request of January 14th, NHTSA is pleased to provide the following information concerning its defect and recall programs to permit you to prepare for the oversight hearings scheduled for February 8, 1983. For convenience, we are following the format adopted in your letter.

Irrelevant material deleted

Form DOT F 1320.65 (Rev. 9-80)
Supersedes previous edition

OFFICIAL FILE COPY

5. Has the agency conducted studies, or otherwise monitored the success or effectiveness of the warning label program? Similarly, has NHTSA attempted to obtain any such documentation from the Ford Motor Company?

Answer: In accordance with the settlement itself, and as reflected in the agency's representation to the Court, NHTSA continues to monitor and analyze comparative failure data. This was particularly undertaken in response to Ralph Nader's "petition to reopen" the investigation in October 1981. The agency's analysis showed and shows an apparent decline in the number of reported accidents beginning, during, and following the May 29, 1981 completion of Ford's notification program. This analysis is confirmed by the chart contained in Attachment 17, which shows a decline in the average number of reports received daily by ODI, from .6 per day from January 1 - May 31, 1981 to .1 per day from June 1, 1981 - January 15, 1983. Stated differently, ODI has received a total of 61 new complaints concerning Ford transmission since June 1, 1981, whereas it had received 84 such complaints between January 1, 1981 and June 1, 1981. Such an absolute and relative decline corresponds in virtually all respects with the levels of incident reduction the agency has observed in prior major recall campaigns.

NHTSA requested information from Ford concerning its evaluation of the success of the warning label program. Ford estimated that 88 percent of the letters mailed were in fact delivered, and provided documentation of its efforts to give "careful consideration to visibility, legality, and dimensional parameters for the reminder label."

Irrelevant material deleted

Sincerely,

Raymond A. Peck, Jr.

Administrator

Enclosures

Attachment K, No. 2

03 JUN 1983

The Honorable Timothy E. Wirth
Chairman, Subcommittee on Telecommunications,
Consumer Protection, and Finance
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I am pleased to submit the following answers to questions you propounded in your letter of May 10, 1983, concerning the 1980 Ford transmission settlement entered into between Ford and former Secretary Goldschmidt. Because I have not been directly involved in enforcement matters over the past two years I am now receiving in depth staff briefings on current enforcement program issues, and particularly the matter of the Ford transmission settlement. The following information is submitted pursuant to your request, and, for convenience, I shall repeat each question before its responsive answer.

Irrelevant material deleted

8. Ford has admitted failing to report several park-to-reverse deaths which occurred before the close of NHTSA's C8-02 investigation, and has recently reported several post-agreement fatalities which it may have been aware of for some time for which it did not submit reports to NHTSA voluntarily (without a specific request from NHTSA to forward the complaints). What measures has NHTSA taken to insure that such reports of deaths and injuries in park-to-reverse accidents will be sent to NHTSA in a timely basis in the future?

9. Correspondence between NHTSA and Ford on the subject of park-to-reverse since the close of the investigation shows no indication that NHTSA has requested reports of park-to-reverse injuries, property damage accidents, and incidents from Ford except in response to citizen petitions to reopen the investigation. No requests appear to have been made since March 19, 1982. If Ford is not supplying such information regularly why has NHTSA not written Ford during the past year requesting updated complaint information?

Answers to Questions 8 and 9

NHTSA has previously made a commitment to the Court to monitor the 1980 Ford Settlement Agreement. Attachment 5 contains copies of information requests sent to Ford since the date of the settlement. You will note that our letter of May 27, 1983 specifically requests Ford to furnish us reports of all accidents and injuries not previously submitted to the agency. NHTSA will continue in the future to monitor these Ford transmission events.

Sincerely,

Original Signed By

Diane K. Steed
Acting Administrator

Enclosures

NINETY-EIGHTH CONGRESS

TIMOTHY E. WIRTH, COLO., CHAIRMAN

EDWARD J. MARKEY, MASS.
AL SWIFT, WASH.
CARDISS COLLINS, ILL.
ALBERT GORE, JR., TENN.
MICKEY LELAND, TEX.
[illegible] BRYANT, TEX.
[illegible], CALIF.
[illegible] SCHEUER, N.Y.
[illegible], CALIF.
JOHN D. DINGELL, MICH.
(EX OFFICIO)

MATTHEW J. RINALDO, N.J.
CARLOS J. MOORHEAD, CALIF.
THOMAS J. TAUKE, IOWA
MICHAEL G. OXLEY, OHIO
JAMES T. BROYHILL, N.C.
(EX OFFICIO)

Attachment K, No. 3

ROOM B-331
RAYBURN HOUSE OFFICE BUILDING
PHONE (202) [illegible]

U.S. HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON TELECOMMUNICATIONS, CONSUMER PROTECTION, AND FINANCE

COMMITTEE ON ENERGY AND COMMERCE

WASHINGTON, D.C. 20515

September 19, 1983

Diane K. Steed
Deputy Administrator
NHTSA
400 7th Street SW
Washington, D.C. 20590

Dear Ms. Steed:

I am writing to followup on several issues presented at our recent hearing on NHTSA's oversight of the Ford transmission "park-to-reverse" settlement agreement. As you know, our Subcommittee is deeply concerned that the agency take appropriate action as expeditiously as possible to mitigate the continuing incidences of accidents, deaths, and injuries from this defect.

You testified at our July hearing that you have directed that "priority be given to analyzing and comparing data on this case," and listed several procedures and activities that the agency will carry out concerning public awareness of the dangers of Ford transmissions. These actions were to include: (1) identifying "appropriate ways to call public attention to this problem"; (2) "investigating all accidents where fatalities are involved"; (3) issuing press releases and writing and publishing articles on the subject; (4) "strengthening language that (is given to) people on the Hotline and in (y)our letter responses"; and (5) "steps to aid the elderly".

Accordingly, I am requesting that you submit to the Subcommittee a plan for accomplishing the above activities. Your plan should include dates that these actions will be implemented, and how NHTSA will monitor the effectiveness of any public information campaigns. Moreover, your plan should indicate a proposed budget allocation for activities in this area and from which accounts funds are to be spent.

As you recall, information provided to the Subcommittee at the hearing and subsequently, indicates that 52 deaths have occurred as a result of "park-to-reverse" incidents. However, you testified at our hearing that "only" 26 deaths are attributable to this problem. Because an accurate count of fatalities and injuries is instrumental in determining if, in fact, the sticker label program has been effective, I am asking that you review the list, and indicate on a case-by-case basis why all 52 fatalities were not included in your list. For your convenience I have enclosed a copy of this list.

830920 0014

BEST COPY AVAILABLE

I am also requesting that you provide the Subcommittee with copies of the following documents:

1. All accident investigations on Ford transmission "park-to-reverse" cases since the settlement agreement. If no reports exist, I am requesting that you submit a plan of when you will investigate all fatalities.
2. All press releases or articles drafted and distributed by the agency along with an explanation of target groups to which they will be sent.
3. Draft responses provided to Hotline operators.
4. A sample of NHTSA's response to owners of Ford vehicles who claim to experience "park-to-reverse" problems.

Nearly 8 weeks have passed since our hearing on the Ford transmission case at which you testified that the NHTSA will give priority to this case. Accordingly, I believe that two weeks is a reasonable time period in which to generate the requested plan of action and the supporting documents. Therefore, we will look forward to receiving your response as soon as possible, but no later than Monday, October 3, 1983.

Thank you in advance for your attention to these critical issues and I look forward to hearing from you soon.

With best wishes,

Sincerely yours,

Timothy E. Wirth

Timothy E. Wirth
Chairman

cc: Secretary Dole

Attachment K, No. 4

OCT 3 1983

The Honorable Timothy E. Wirth
Chairman, Subcommittee on Telecommunications,
Consumer Protection and Finance
Committee on Energy and Commerce
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your letter of September 19, 1983, requesting additional information concerning NHTSA's plans for monitoring the December 1980 settlement of the Ford transmission investigation, ODI Case No. C8-02. In my testimony at your July hearing on this subject, I stated that I was not inclined to disturb the settlement, based on available information that showed a significant decline in reported fatalities following the settlement, but that I thought NHTSA could do more to inform the public about the safety hazards of leaving any car with its engine running. I continue to hold those views.

At my direction, our Office of Defects Investigation (ODI) has already instituted a program for investigation of reports of new Ford "Park to Reverse" fatal accidents. These investigations will be undertaken in order to accurately determine the number of fatalities and to acquire any new information that might bear on the subject. Under this program, ODI will investigate all future reports, unless sufficient facts are contained in the initial report to establish that a "Park to Reverse" fatality occurred. We will generally limit these investigations to reported fatalities within the scope of ODI Case No. C8-02; i.e., those involving 1970-1979 Ford cars, light trucks, and vans equipped with automatic transmissions. However, as appropriate, ODI may also decide to investigate certain reported fatal accidents that are outside the scope of C8-02. I note that funds for all such investigations, at an estimated $1,000 per investigation, will come from NHTSA's Enforcement budget.

Also, in accordance with my commitment at the July hearing to "[strengthen] the language that we give people on the Hotline and in our letter responses," ODI has modified the standardized texts of its communications with consumers about the Ford transmission investigation. The revised texts state that NHTSA strongly urges drivers to comply with the precautions on Ford's warning labels, repeat those precautions, and request that persons reporting accidents provide additional information to the agency. As you requested, copies of the revised texts appear at Attachment 1.

ODI has reviewed the list you provided of 52 post-settlement deaths that allegedly are attributable to Ford "park-to-reverse" accidents. Based on available invormation, ODI has concluded that 35 of these 52 reported fatalities should be included in the "count" of post-settlement fatalities; that two (2) of these fatalities are properly counted as pre-settlement fatalities; that six (6) should be excluded from the "count" because they involve older vehicles outside the scope of Case C8-02; that seven (7) should be excluded from the "count" because the facts reported do not describe an inadvertent shifting from "park" to "reverse"; and that there is insufficient detail to determine whether two (2) reported fatalities are properly included in the "count". The list of reported fatalities, with ODI's conclusions, is found at Attachment 2. I note that two of these 52 fatalities were first reported to NHTSA following your July hearing, and were evidently also unknown to your committee at the time of that hearing.

ODI has requested further information on all 52 of these reported fatalities from Ford Motor Company, and has recently received Ford's initial response, which contains information about 11 of the cases. Copies of the ODI request and the Ford response are contained at Attachments 3 and 4. ODI has not conducted any other investigations of the fatalities on this list, and has no present plans to do so. I did not intend my commitment to investigate newly-reported fatalities to be applied retroactively to fatalities reported before that commitment was made. Nor do I see any need to devote investigative resources to newly-reported fatalities, such as the two reported since the July hearing, where sufficient information already is available to permit their inclusion in the "count" without further inquiry.

In addition to the materials you requested, several charts and graphs, which show known fatalities by their date of occurrence, are included in Attachment 5. The graphs show fatalities for each year as occurring on January 1 of the succeeding year, and also display the estimated on-the-road vehicle population over the period in question. As you will note, Graph No. 1, which plots the fatalities which NHTSA includes in its "count" of "Park-to Reverse" fatalities for vehicles covered by C8-02, shows the number of reported fatal accidents declining significantly after the settlement. Also, the number of reported fatalities is falling at a faster rate than the number of vehicles on the road. We have also taken into account those reported fatal accidents (both pre- and post-settlement) which involve vehicles outside the scope of C8-02, or for which we have insufficient details to determine their appropriate classification. Graphs Nos. 2, 3, and 4 show those results, which do not materially affect the conclusion that reported fatalities have declined significantly since the settlement.

Our Office of Public Affairs, which also has been working on this project, has identified a number of ways in which to call public attention to precautions for parking vehicles with automatic transmissions. Three such projects already are under way: (1) NHTSA's new publication, "AutoWise," which will contain general auto safety information, will include information on steps to follow when parking and leaving a vehicle. This information will appear at several places in the book. (2) NHTSA's Public Affairs Office is drafting an article on this subject for distribution to some 4,000 weekly newspapers of more than 2,000 circulation. This will be part of a series of monthly mailings on safety subjects which NHTSA initiated, at my direction, over the summer. (3) We are working with the American Driver and Traffic Safety Education Association (ADTSEA), and the American Automobile Association (AAA) to emphasize proper parking techniques in classroom driving instruction as well as driver education textbooks. The Executive Director of the ADTSEA, Mr. William Cushman, has agreed to mail information provided by NHTSA to some 20,000 driver education instructors and experts. Additional projects, which are planned but not yet in progress, include the following: (1) work with the Social Security Administration to explore the possibility of inserting an NHTSA mailer on parking precautions into envelopes containing Social Security checks. Most of these checks are sent to the elderly; and (2) meet with the American Association of Retired Persons (AARP) to plan additional information efforts aimed at AARP members. AARP has already published an article on this subject, by Elliot Carlson, entitled "Park to Reverse? The right answer to that question could save your life", in the October-November 1983 edition of its publication Modern Maturity.

BEST COPY AVAILABLE

I believe that all of these projects can be implemented by the end of this calendar year. The costs associated with this public awareness program will be allocated to NHTSA's General Administration budget.

I trust that this is responsive to your request.

Sincerely,

Original Signed By

Diane K. Steed
Administrator-Designate

Enclosures

Attachment K, No. 5

J

JAN 10 1984

mailed by 1/13

The Honorable Timothy E. Wirth
Chairman, Subcommittee on Telecommunications,
Consumer Protection and Finance
Committee on Energy and Commerce
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This is in response to your ~~recent~~ letter concerning the ongoing program of the National Highway Traffic Safety Administration (NHTSA) to monitor the December 1990 settlement of the Ford transmission investigation (Case No. C6-02) and to inform the public about proper methods for parking cars with automatic transmissions.

I would like to reassure you that the Ford "Park-to-Reverse" matter has high priority within the agency. We review all reports of such incidents coming to the agency from all sources and perform analyses of the information at various times. All 52 deaths occurring since the settlement have been considered by us in analyses involving investigated (Case No. C8-02) vehicles and "Pre-1970" vehicles including all those for which "insufficient detail" existed. We consider all incidents to be relevant to the "death count" for these analyses. As I reported earlier, these different analyses all concluded that reported fatalities have declined significantly since the settlement. Further, the Court of Appeals found that "the Department would have faced great difficulties in sustaining its burder to prove the existence of a defect" in this case. Together, these two facts confirm my view that I am not inclined to disturb the December 1980 settlement. Our latest request to Ford was to obtain documenting information regarding these 52 incidents for which Ford had already supplied certain data in response to an earlier agency request. We now have the full reply from Ford to this latest request. The reply is too lengthy to enclose but is available for your inspection.

With regard to investigation of reported fatalities, I regret that my July testimony before the subcommittee did not make clear that my intention was to investigate newly-reported Ford transmission fatalities rather than fatalities reported prior to the hearing. However, let me emphasize that we will not ignore any reports of fatalities. As warranted, we will investigate accidents which involve vehicles within the scope of the C8-02 investigation and, as appropriate, "pre-1970" vehicles as I advised in my earlier letter to you. These accident investigations will be undertaken if the investigation is likely to confirm whether the accident is attributable

DOT F 1320.01 (Rev. [illegible])
Supersedes previous edition

OFFICIAL FILE COPY

BEST COPY AVAILABLE

to a "Park-to-Reverse" incident, and to acquire any new information that may bear on the subject. It is possible that such investigations could uncover elements, such as driver operations or behavior, which should be brought to the public's attention. If future reports contain sufficient information to allow us to reasonably conclude that a "Park-to-Reverse" incident had occurred, we will not investigate the incident further unless other compelling reasons exist such as the likelihood of uncovering new technical information. Since we have already included in agency analyses all fatalities reported prior to the hearing, including consideration of non-case vehicles and incidents with "insufficient detail," I see no strong reason to investigate these reports at this time. The cost of such investigations is not an issue.

With respect to our public information program, our campaign will be aimed at all drivers of vehicles with automatic transmissions in accordance with my July testimony that NHTSA could do more to inform the public about the safety hazards of leaving any car with its engine running. When it is appropriate the Ford investigation will be used as an example to describe the problem. I am pleased to report that we have received permission from the American Association of Retired Persons to reprint and use the article (copy enclosed) which appeared in the October 1983 issue of their magazine, Modern Maturity.

The project to insert parking precautions into envelopes containing Social Security checks was among several under consideration reported in my earlier letter. When we looked further into this and learned its cost, we decided against it. We are working to develop other methods for communicating with elderly drivers. It is interesting to note that 18 of the 52 deaths where age was known were of people 60 years or older, and 13 of the 18 were drivers of the vehicles.

I have not received any information to date which would cause me to alter my view on this matter. Since the date of my last letter, no additional fatalities requiring investigation have been reported to us.

Sincerely,

Diane K. Steed

Diane K. Steed

Enclosure

NHTSA:ODI:NEF
PYoshida:61690:prp:12/16/83:GPARKER:jet:1/4/84
NHTSA Control 8311020018
NOA-01 (Subj/Chron), NOA-02, NOA-10, NOA-30 Rubenstein
NEF-01, NEF-10 Subj/Chron, NEF-11, NEF-12
Filecabinet Ford Letters C8-02 - NEF-12 - Wirth/Yo

[illegible]

[illegible]

U.S. HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON TELECOMMUNICATIONS,
CONSUMER PROTECTION, AND FINANCE

COMMITTEE ON ENERGY AND COMMERCE
WASHINGTON, D.C. 20515

831102 0018

October 31, 1983

Ms. Diane K. Steed
Deputy Administrator
National Highway Traffic Safety
Administration
400 7th Street SW
Washington, D.C. 20590

Dear Ms. Steed:

I have had the opportunity to review your recent letter and attachments concerning the Ford "park-to-reverse" defect case. I am deeply concerned about the potential effectiveness of your suggested program to mitigate the risk of death and injury from this defect.

First, I am pleased to see that NHTSA has asked Ford Motor Company for information concerning the 52 deaths occurring after the settlement agreement. However, I am deeply disturbed that, as your letter to Ford indicates, you only requested this information "to enable (your) office to properly respond to" me. NHTSA's responsibility under the law is to vigorously pursue defects cases -- not just in response to Congressional requests for information, but as a matter of your day-to-day activity. In light of your commitments to the Subcommittee on Telecommunications, Consumer Protection and Finance to give the Ford case a "high priority" this apparent failure to request pertinent information on your own is particularly unacceptable.

Second, you agreed at our hearing to investigate Ford park-to-reverse fatalities. While I was hopeful that this commitment would be carried out, you now suggest that your commitment to investigate will not be "applied retroactively to fatalities reported before that commitment was made." Frankly, I am somewhat shocked that you could profess to give this issue a fair and well-deserved review while totally ignoring critical evidence on the effectiveness of the "sticker program" as manifest in the tragic number of deaths reported. Your intimation that investigations at $1000 each are too high a price to pay is both insulting to the agency and to the American public. If you believe the Defects Office needs additional funds to carry out its statutory mandate, you of course can request additional funds. Given the concern of this Subcommittee about NHTSA's performance in the area of defects, we would be eager to entertain such additional requests.

Concerning the "death count", you have indicated that deaths occurring from vehicles built before 1970 are not relevant to the case. I disagree. In fact, Ford sent warning labels to owners of all vehicles built after 1967, so obviously an accident, injury or fataility in an older vehicle is just as relevent to the effectiveness of the sticker label campaign as a fatality occurring from a post-1970 vehicle. Moreover, you have noted that some of the fatalities are not included in the "count" because of "insufficient detail." Will NHTSA investigate to obtain sufficient detail, or will the agency ignore these cases because they occurred before you committed to us to investigate? I am not eager to quibble about when a death is really a death. I am only concerned that NHTSA, in reviewing the effectiveness of the sticker campaign, take into account all of the available facts of the case.

I am interested in the details of your proposed public information campaign, in which NHTSA plans to alert the public about "precautions for parking vehicles with automatic transmission." Your letter indicates that this will be done through new NHTSA publications, and by adding instructions in driver education textbooks. I am curious as to whether this campaign will be geared to drivers of Ford vehicles -- since the agency has established a far greater likelihood of "park-to -reverse" incidents in Fords -- or generally to warn Americans to park correctly. It seems to me that this latter alternative would not accomplish much in terms of alerting owners of Fords, who are at increased risk of death and injury, to the nature of the problem and the magnitude of the danger. I would appreciate hearing your thoughts on this issue.

Finally, I am intrigued by your project to insert a "NHTSA mailer on parking precautions into envelopes containing Social Security checks." While a large proportion of park-to-reverse fatalities are older Americans, I'm sure you are aware that most senior citizens do not drive -- rather they are often innocent bystanders or passengers in vehicles. Awareness of proper parking precautions, it seems to me, will not help older Americans, unless of course, as Congressman Bryant stated at our July hearing, you mail them instructions to "run faster" when they see a car coming toward them. Moreover, I am told that the cost of such a mailing could range well over $1 million. I would appreciate additional details on this project, including how you plan to monitor its effectiveness, before you undertake such a large expenditure of funds.

Again, I urge to you carefully review this case. "Park-to-reverse" fatalities continue to occur and to date comprise the largest death rate of any previous NHTSA defect case. I am looking forward to your response to the issues I have outlined and hope that you will seriously pursue the commitments you have made to this Subcommittee.

Sincerely yours,

Timothy E. Wirth
Chairman

cc: Secretary Dole
Members, Subcommittee
on Telecommunications,
Consumer Protection and
Finance

Attachment K, No. 6

DEC 10 1984

The Honorable Timothy E. Wirth
Chairman, Subcommittee on Telecommunications,
  Consumer Protection and Finance
Committee on Energy and Commerce
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This is in response to your letter regarding the Ford transmission park-to-reverse problem.

On July 27, 1983, I testified before your Subcommittee that the National Highway Traffic Safety Administration (NHTSA) can, should, and will do more in the future to alert consumers to the danger of leaving their cars unattended with the engine running and to advise consumers of proper parking procedures. As stated in my letter of October 2, 1984, several projects are now underway. We will continue these efforts and look for other ways to inform drivers of this hazard and how to avoid it. I did not testify that the agency had done a poor job of monitoring the effectiveness of the warning label program.

Ford's April 18, 1984, response to our March 27, 1984, request for updated accident information provided information regarding 24 fatalities. Our analysis of the 24 incidents indicates that eleven appear to be "park-to-reverse (P-R)" incidents. The information available on three other incidents was inadequate to determine the cause of the accident. The remainder were either previously counted by NHTSA or do not appear to be appropriately characterized as "P-R" related fatalities.

In your letter you state that the number of deaths from "P-R" incidents has increased, based on a comparison of the number of deaths in two equal time periods before and after owner receipt of warning labels. Our count of fatality incidents which occurred in the time periods you refer to is as follows:

1. July 20, 1977 - June 11, 1980: 64 fatalities

2. June 5, 1981 - May 6, 1984: 39 fatalities

For this count we have considered, by date of occurrence, all known fatalities involving the 1970-1979 Ford models within the scope of the original defect case. There are other reported incidents in both time periods which involve vehicles outside the scope of the case and incidents with insufficient evidence to determine if they were "P-R" incidents. We have examined whether fatality rates have declined significantly when these incidents are included. In all instances, the rate of reported fatalities is decreasing.

rm DOT F 1320.55 (Rev. 9-80)
persedes previous edition

OFFICIAL FILE COPY

I remain deeply disturbed by reports of any accidents, injuries, and deaths in this matter. However, nothing has changed since my appearance before the Subcommittee last year to convince me the case should be reopened. The agency has looked into and fostered several programs to remind the public of this potential problem and I intend to continue this effort.

Sincerely,

Diane K. Steed

Diane K. Steed

[illegible] CHAIRMAN
[illegible]
[illegible]
[illegible]
[illegible] TEX
[illegible] CALIF
[illegible] H. SCHEUER, N.Y.
HENRY A. WAXMAN, CALIF
JOHN D. DINGELL, MICH
(EX OFFICIO)

MATTHEW J. RINALDO, N.J.
CARLOS J. MOORHEAD, CALIF
THOMAS J. TAUKE, IOWA
MICHAEL G. OXLEY, OHIO
JAMES T. BROYHILL, N.C.
(EX OFFICIO)

ROOM B-331
RAYBURN HOUSE OFFICE BUILDING
PHONE (202) [illegible]

U.S. HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON TELECOMMUNICATIONS,
CONSUMER PROTECTION, AND FINANCE
OF THE
COMMITTEE ON ENERGY AND COMMERCE
WASHINGTON, D.C. 20515

November 15, 1984

Honorable Diane Steed
Administrator
National Highway Traffic
 Safety Administration
400 - 7th Street, S.W.
Room 5220
Washington, D.C. 20590

Dear Administrator Steed:

I am writing concerning your October 2 response to my letter of August 15, 1984. I am deeply concerned about NHTSA's apparent continuing neglect of the Ford transmission park-to-reverse problem.

Over a year ago, on July 27, 1983, you testified before the Subcommittee that the agency had done a poor job of monitoring the effectiveness of the warning label sent out to millions of Ford owners to remind them to put the car in "park", turn off the engine and set the parking brake. The purpose of this sticker was to reduce the terrible toll of deaths, injuries, and accidents which occur when Ford cars unexpectedly shift from the park gear into reverse. Unfortunately, it is becoming increasingly clear that the sticker warning program is having virtually no effect on decreasing the incidence of deaths, injuries and accidents.

On March 27, 1984, NHTSA asked Ford Motor Company for an updated list of fatalities, accidents and injuries due to Ford vehicles failing to hold or engage in the park gear. Frankly, I was appalled to read the company's response:

- 22 additional deaths have been reported to Ford in less than a year, since June, 1983, when NHTSA last asked Ford for information on this subject. This brings the total fatalities attributable to the park-to-reverse problem to a tragic 259. 76 deaths have occurred since the warning label program was agreed upon.
- 225 additional injuries have been reported to Ford during this time period.
- 262 additional accidents with property damage have been reported to Ford during the same period.

128136

8411190018

Furthermore, during our Subcommittee hearing last year you stated that NHTSA would begin a public information program to alert Americans on how to park their cars properly. While I was extremely skeptical that such an approach would be beneficial I was willing to give it a chance to work. However, it is abundantly clear from the data supplied by Ford to you that that effort has produced no measurable results.

In fact, it appears that the number of deaths from park-to-reverse incidents reported to NHTSA has actually increased over time, rather than decreased, as you claim. It seems to me that the best way to look at the data is to compare the number of deaths which occurred in identical time periods, rather than compare when NHTSA received reports of deaths that may have occurred a decade ago. For example, 53 deaths have been reported to NHTSA as occurring since June 15, 1981 -- when the agency says that all Ford owners should have received the warning labels -- through May 6, 1984. In the same amount of time, from the time that the government announced its investigation of the Ford park-to-reverse problem on July 20, 1977, through the date that NHTSA made an initial finding of defect on June 11, 1980, 48 deaths have reportedly occurred.

NHTSA and Ford have contended that the death rate during the investigation was inflated because of the publicity about the case. If this is true, then why are the number of deaths that have occurred since the warning label program has been in effect greater than those that have occurred during the investigation when there was greater media coverage of the problem?

It is time to get serious about this deadly problem. Public relations programs are no cure for a defect and you and I both know that spending scarce federal dollars to tell 230 million Americans how to park correctly will have little effect. In previous letters I have asked you for evidence that your public relations program will work, and no assurances have been forthcoming. I would like a justification as to why, after all this time and the obvious failure of the sticker warning program and your public information campaign, a recall is not in order. Please respond by November 30, 1984.

It is time to stop hoping this problem will go away, and take action to solve it.

Sincerely yours,

Tim Wirth

Timothy E. Wirth
Chairman

STATEMENT OF DIANE STEED, DEPUTY ADMINISTRATOR, NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION, ACCOMPANIED BY GEORGE PARKER, ACTING ASSOCIATE ADMINISTRATOR FOR ENFORCEMENT

Ms. STEED. I will be happy to, Mr. Chairman.

Thank you for your invitation to testify today on the Ford transmission case. Accompanying me, on my right, is Frank Berndt, chief counsel of the agency, and, on my left, is George Parker, our acting associate administrator for enforcement.

I welcome this opportunity to present and explain the agency's efforts in this matter, and, more importantly, to avail ourselves of any new information that may emerge during these hearings.

Before the recent resignation of the Administrator, I was not involved in the safety defect determinations on a day-to-day basis, and I have only recently been briefed on this particular matter. In this and other defect investigations, I am deeply disturbed by the reports of accidents, deaths and injuries which have occurred. Auto safety is the agency's highest mission, and we give defect investigations our first priority.

The Ford transmission case, which concerns the matter of the alleged safety-related defects in Ford vehicles with automatic transmissions produced between 1970 and 1980, was settled by former

Secretary of Transportation Neil Goldschmidt on December 30, 1980.

In that settlement agreement, Secretary Goldschmidt contemplated that the warning label program would:

> Reduce significantly the incidence of accident, death and injury resulting from unexpected rearward movement after the driver has attempted to shift the gear selector lever to "P" for park, and would fulfill the requirements of the National Traffic and Motor Vehicle Safety Act of 1966, as amended.

At the present time, I am not inclined to disturb this settlement. Chief among the reasons for my decision is that the rate of accidents, deaths and injuries reported has been declining, as contemplated by Secretary Goldschmidt's December 30, 1980, settlement agreement.

Because the settlement appears to be working, and because reopening the settlement would compromise our ability to use settlement as a tool to speed the removal of defective cars from the road, it is my inclination at this time to leave the settlement in place.

NHTSA's June 9, 1980, initial defect determination in the matter covered some 23 million 1970 through 1980 Ford vehicles with C-3, C-4, C-6, FMX, and JATCO automatic transmissions. As of the date of the initial defect determination, NHTSA had received reports of more than 23,000 complaints of inadvertent vehicle movement of Ford-built vehicles, many containing reports of accidents, deaths and injuries. However, throughout the investigation, Ford vigorously denied the existence of any safety-related defect in the vehicles under investigation.

Under the settlement, Ford was required to send both warning letters and self-sticking labels to all owners of covered vehicles. These communications informed recipients of the agency's initial defect determination of June 1980 and reminded them of the proper procedures to follow when parking and leaving their cars. Ford has estimated that 21 million letters and warning labels, or about 88 percent of the total mailed, were in fact delivered to their addressees.

When the validity of this settlement was challenged by the Center for Auto Safety, the agency examined the data and reaffirmed its conclusion that the settlement was reasonable. Both the U.S. District Court and the U.S. Court of Appeals for the District of Columbia Circuit have also affirmed the reasonableness of the settlement and have upheld the Secretary and NHTSA's authority to enter into this specific settlement.

Since assuming my new duties, I have directed that all information requests be vigorously pursued, and I have directed that priority be given to analyzing and comparing the data from this case, both before and after the settlement, with our general information on other recalls. Our analysis has shown a dramatic decline in reported accidents since the May 1981 completion of Ford's notification program.

Specifically, the average rate of fatalities reported per day was 300 percent higher before completion of the warning label program than it is today. This decline corresponds with the level of complaint reduction that we in the agency would expect in a major recall campaign.

Since it is always dangerous to leave an unattended vehicle running, I have directed the staff to identify appropriate ways to call public attention to this problem. Persons who contact the agency about this problem, in writing or by calling on the hotline, are told that the agency conducted an investigation and that the manufacturer provided notification of the possibility that the vehicle might shift into reverse without warning, and provided a label to remind drivers of the hazards of failing to shut off the engine before leaving the vehicle.

In closing, I want to reaffirm our commitment to auto safety in the very strongest terms and to pledge our continuing diligence not only in the Ford transmission case, but in all cases in which defects are alleged to exist.

This concludes my prepared statement, Mr. Chairman, however let me say that as I come freshly into this matter, and as I accept my new duties, as I said in the statement, I am not inclined at this particular time, based on the information that I have now, to disturb the settlement. Should new facts become available to me in the future, I certainly will keep an open mind on the subject.

I also believe that the agency can and should and will do more in the future regarding consumer information about this particular safety problem that exists with all cars: That is, whenever you leave a car, shut off the engine, make sure that it is in park, and set the parking brake.

Specifically, we will be investigating all fatal accidents involving Ford transmissions. We are also going to take a number of steps with regard to consumer information to get the word out to the public about not leaving a car when its engine is running. We will be doing things like press releases and articles. We will be strengthening the language that we give people on the Hotline and in our written responses to inquiries.

We will also be considering steps that we could take to aid the elderly, for example, since they are over-represented in this case.

At this point, my colleagues and I will be pleased to try and answer any questions that you have.

Mr. BRYANT. I am curious as to how you are going to help the elderly. Are you going to help them learn to run faster?

Ms. STEED. We are going to look to see what we can do, Mr. Chairman.

Mr. BRYANT. Ms. Steed, how many people have been killed by a park-to-reverse accident in a Ford automobile since this settlement was entered into?

Ms. STEED. Since the settlement, Mr. Chairman, I believe that number is, if I can add up here real quickly, 26 since settlement.

Mr. BRYANT. Our numbers say that it has been 50. In any event, I am curious since you are doing the job, did you know that figure before consulting that piece of paper?

Ms. STEED. No, sir, I did not.

Mr. BRYANT. Recognizing that you are taking over the responsibility for the recently departed Mr. Peck, who we all miss today at these hearings, did you not know that because Mr. Peck didn't know it either, and it is not something that the administrator has known?

Mr. **Parker**. These are the fatalities up to the point of the phase I report, which would be 97 plus another 21, and that rate has gone down considerably since the decision date and since the labels were mailed out.

Mr. **Bryant**. What kind of lag time is there between the time that fatalities occur and they are reported, or do you get notice of them?

Mr. **Parker**. That is a good question. There is some lag time. We suppose that there would be some that wouldn't be reported, but it would not significantly change the rate as of the later numbers.

Mr. **Bryant**. In your testimony, you testify prospectively about what you intended to do in the future. Would you repeat a couple of those things?

Ms. **Steed**. Sure, I will be happy to. We think that there are a number of things that the agency can do that we have not been doing in the past. We know that this is a general safety problem that is likely to happen in any car, a fact that the settlement also noted. We must emphasize the fact that any time any one exits a car, there are a number of things you should do. You should never leave it running. You should always make sure that it is in park. You should always set the parking brake. I think we can do a lot more than we have in the past to call these simple safety practices to the public's attention. We will also investigate all fatal accidents involving Ford transmissions to insure we have all relevant facts about this problem.

Mr. **Bryant**. Do you think that what was done in the past was not adequate?

Ms. **Steed**. I beg your pardon.

Mr. **Bryant**. Do you feel that what was done in the past was not adequate?

Ms. **Steed**. That is correct, Mr. Chairman, I do. I think that we could do a lot more than we have done.

Mr. **Bryant**. The Reagan administration has had control of this agency since 1980. My question is: Why haven't they been working on it since 1980?

Ms. **Steed**. I can't speak for the former administrator, Mr. Chairman, but I can tell you that I personally feel that we have not done enough, and that we will be doing more.

Mr. **Bryant**. I would be curious to know, since you all have not done much, what your opinion is of the mailing.

What kind of a car do you drive?

Ms. **Steed**. I drive a foreign car.

Mr. **Bryant**. A foreign car, that is significant in itself. Can you tell me what kind of transmission you have in that car?

Ms. **Steed**. No, sir, I can't.

Mr. **Bryant**. If you received a letter that asked you if you had a FMX, a C-3, a C-4, a C-6, or a JATCO transmission, would you know whether you did or not?

Ms. **Steed**. No, sir, I would not.

Mr. **Bryant**. Are you aware that that is the kind of letter that everybody got?

Ms. **Steed**. Yes; I have seen the letter.

Mr. **Bryant**. Would you like to stick a sticker on the inside your car? Would you think that it would raise the resale value your car if you stuck a safety precaution sticker on the dashboard of your automobile? I assume that your answer probably is no.

Has NHTSA investigated fatalities and injuries in later model Fords which have redesigned transmissions since 1980?

Ms. STEED. Actually investigated?

Mr. BRYANT. Yes.

Ms. STEED. We have investigated a couple of accidents, or a number of accidents that involved Ford transmission, but I am not positive that they were the later transmissions or not.

Mr. PARKER. We have not looked at individual accidents, but we have reviewed in detail reports to us of later model Ford vehicles. We have no fatalities. We have numbers that are unremarkable.

Mr. BRYANT. If you had 26 fatalities like you had, would it not warrant reopening of the entire matter with regard to whether or not the notice that has been given is adequate?

Ms. STEED. If we had 26 fatalities at what point, sir?

Mr. BRYANT. We said that there were 50 fatalities, and you testified that there were 26. It seems to me that that would warrant more than monitoring of the matter, and maybe that is what you will conclude to do, but you have testified today that so far, based on what you have seen, it is enough information to decide to let it stand.

Ms. STEED. Sir, let me tell you, we also monitor very, very carefully what happens when we actually do a safety recall, which this was not, and we know that even in any safety recall we don't get 100 percent satisfaction, or we don't prevent all of the deaths.

If I had looked at this case and it seemed not to be working, if those rates had not fallen as dramatically as they have, I think the question would be different. But at this point, with the settlement appearing to produce the significant drops that were contemplated by both parties, and the settlement having been upheld by two courts, at this point.

The settlement appears to be working, and I believe at present, the settlement should not be reopened.

Mr. BRYANT. With reference to your previous comment that in the last 3 years they have not done a good job over there on this issue, how can you make that statement and say that you are going to leave the status quo intact?

Ms. STEED. I think there are a variety of things that can be done, and what you just asked me is would I reopen the investigation and I have testified that I would not based on my current state of knowledge. I do believe, however, that there is a problem about which the public needs to be aware. People are continuing to leave their running vehicles, and the whole human factor side of that equation must be taken into consideration. I believe that we can do a better job in trying to make the public aware of the unsafe condition of exiting an automobile while it is running, and that is what we intend to do.

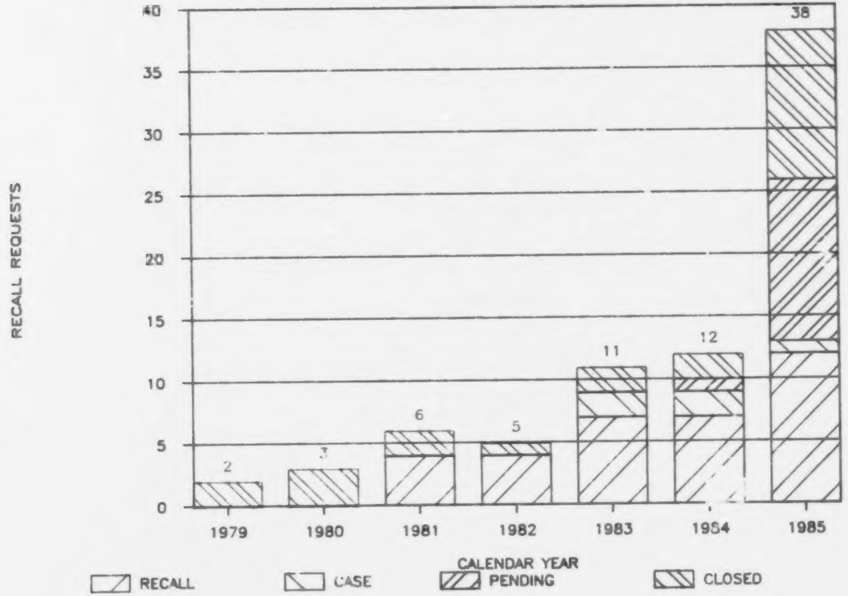
Mr. BRYANT. Do you honestly believe that you are going to be able to change people's driving habits and a get a publicity campaign going to tell people that they shouldn't leave their car running when they get out of it?

Attachment M

Ford Transmissions

Chronology of ODI Correspondence with Ford Motor Company

Date	Remarks
05/04/81	ODI sends letter to Ford advising that Case C8-02 has been closed.
08/27/81	ODI sends IR to Ford including a request for failure information. Ford submits their response by letters dated 9/18/81 and 9/30/81 including "P-R" incident reports received by Ford since 3/25/81 (date owner notifications began) and through 8/31/81.
01/08/82	ODI sends IR to Ford including a request for reports apparently excluded from Ford's response of 9/30/81. Ford submits partial reply by letter dated 2/1/82.
03/19/82	Ruling upon a Ford objection concerning ODI's request of 1/8/82 to provide failure data, ODI directs Ford to provide failure information received by Ford since December 30, 1980. Ford's responses are received by letters dated 4/6/82 and 4/26/82.
01/18/83	ODI sends IR to Ford requesting information regarding the 30 fatalities reported by CFAS and also requested an update regarding fatality reports received by Ford. Ford's reply was received by letters dated 1/31/83, 2/7/83, and 5/4/83.
05/27/83	ODI sends IR to Ford requesting information on reported non-fatal accidents. Ford's reply is received by letter dated 6/10/83, 6/17/83, and 9/21/83.
08/03/83	ODI sends letter to Ford enclosing copies of 2 consumer complaints.
09/23/83	ODI sends IR to Ford requesting available documentation regarding the 52 alleged fatalities. Ford's reply is received by letters dated 9/28/83 and 10/14/83.
03/27/84	ODI sends IR to Ford requesting information on reported fatal and non-fatal accidents. Ford's reply is received by letters dated 4/18/84 and 5/11/84.
10/11/84	ODI sends IR to Ford requesting information on reported fatal and non-fatal accidents. Ford's reply is received by letters dated 11/9/84 and 12/6/84.
03/18/85	ODI sends IR to Ford requesting information on reported incidents, accidents, and fatalities for model year 1966-1985 Ford vehicles. ODI also requests any Ford analyses on the notification and safety label program. (ODI sent a clarifying letter dated 4/8/85.) Ford's reply is received by letters dated 4/22/85, 5/6/85, and 5/15/85. On 5/13/85, ODI requested taht Ford provide a computer tape listing the information contained in their letter of 5/6/85. Ford provided the tape by letter dated 5/31/85.
06/26/85	Ford submits an ODI requested supplement to Ford's incident data base providing a table showing the "Report Date" of incidents broken down by the various model year groups.
08/12/85	ODI sends letter to Ford returning the computer tape Ford furnished on 5/31/85.
9/20/85	ODI sends IR to Ford requesting information on reported incidents, accidents, and fatalities.



DISPOSITION OF RECALL REQUESTS

(10/1/85)

RECALL REQUESTS

1979

LETTER DATE	EA NUMBER	SUBJECT	RECALL NUMBER AND DATE	REEVALUATION AND DATE CLOSED	CASE NUMBER AND DATE OPENED	STATUS
08/31/79	EA9-065	1979 Mustang/Capri Hole in trunk	None	EA Closed 09/20/79	No Case	Closed
11/29/79	EA9-104	S-Series School Bus Brake Pedal Location	None	Closed	No Case	Closed
		1980				
02/06/80	EA9-057	1975-78 Cadillac Headlight Mounting	None	EA Closed 10/27/81	No Case	Closed
04/03/80	EA9-079	Ford/Bendix Hydroboost	None	EA Closed 04/21/82	No Case	Closed
04/17/80	EA80-009	1976-78 Chevette Rim Tire Separations	None	EA Closed 02/03/82	No Case	Closed

RECALL REQUESTS

1981

LETTER DATE	EA NUMBER	SUBJECT	RECALL NUMBER AND DATE	REEVALUATION AND DATE CLOSED	CASE NUMBER AND DATE OPENED	STATUS
05/11/81	EA80-085	1978-79 Cadillac Seville Wire Wheels	None	EA Closed 11/04/83	No Case	Closed
07/06/81	EA80-024	1980 X-Body Rear Brake Lockup	81V-095 08/05/81		C81-09 07/01/81 (In Litigation)	Case & Recall
08/04/81	EA81-007	Honda Undercarriage Corrosion	81V-136 11/15/81			Recall
11/20/81	EA80-112	Chrysler Hatchback Props.	None	Case Closed 01/03/85	C82-18 07/19/82	Closed
11/23/81	EA79-107	VW Fuel Pump Circuit	83V-117 10/26/83	Case Closed 06/15/84	C82-02 02/05/82	Recall
12/02/81	EA81-015	GM A-Body Rear Axle Separations	84V-149 11/26/84		C82-03 03/16/82	Recall

RECALL REQUESTS

1982

LETTER DATE	EA NUMBER	SUBJECT	RECALL NUMBER AND DATE	REEVALUATION AND DATE CLOSED	CASE NUMBER AND DATE OPENED	STATUS
06/01/82	EA81-010K	Ford Hatchback Props.	None	Case Closed 01/03/85	C82-19 07/19/82	Closed
07/29/82	EA82-041	Datsun Brake Lights	82V-084 09/08/82	Case Closed 03/09/83	C82-21 08/30/82	Recall
09/23/82	EA82-030	International Child Seats	82E-020 10/28/82			Recall
10/21/82	EA83-005	Century Child Seats	82E-022 11/30/82			Recall
12/23/82	EA82-033	Subaru Seat Backs	83V-006 01/28/83			Recall

RECALL REQUESTS

1983

Page 1 Of 2

LETTER DATE	EA NUMBER	SUBJECT	RECALL NUMBER AND DATE	REEVALUATION AND DATE CLOSED	CASE NUMBER AND DATE OPENED	STATUS
01/10/83	EA80-111	VW Brake Line Corrosion	83V-116 10/26/83	Case Closed 01/03/85	C83-04 03/29/83	Recall
02/16/83	EA83-003	Mazda Shoulder Belt	83V-052 04/30/83			Recall
03/16/83	EA83-009	Datsun Fuel Tank Straps	83V-058 05/26/83			Recall
03/17/83	EA83-006B	GM Truck Differential	83V-045 04/21/83			Recall
03/28/83	EA82-028	Ford Escort Fires	None	EA Closed 07/26/84		Closed

BLANK PAGE

BLANK PAGE

BLANK PAGE

RECALL REQUESTS

1983

Page 2 of 2

LETTER DATE	EA NUMBER	SUBJECT	RECALL NUMBER AND DATE	REEVALUATION AND DATE CLOSED	CASE NUMBER AND DATE OPENED	STATUS
05/12/83	EA83-014	Chrysler Carburetor Isolator	None	EA Closed 06/08/84		Closed
06/06/83	EA83-007	Saab Trans Lockup	83V-068 07/07/83			Recall
08/12/83	EA80-100	GM X-Car Power Brake Assist			C84-01 10/28/83	Case
08/12/83	Audit 83-02	Audi 5000 Sudden Accel.	83V-095 09/14/83			Recall
11/01/83	EA83-013	Ford Escort Seat Backs	84V-095 07/12/84			Recall
11/03/83	EA80-087	Ford Mustang Brake Lockup			C84-05 04/03/84	Case

RECALL REQUESTS
CY 1984
Page Number 1

LETTER DATE	EA NUMBER	SUBJECT	RECALL NUMBER & DATE	REEVALUATION & DATE CLOSED	CASE NUMBER & DATE OPENED	STATUS
2/10/84	EA82-005	1975-1980 Kawasaki police motorcycles develop high speed wobble.			CB5-01 10/24/84	Case
5/10/84	EA84-013	1981-1984 Coachman Class A motorhome auxiliary fuel tanks may fall on road.	84V-083 7/6/84			Recall
5/9/84	EA84-011	1980-1981 Honda Prelude rear strut coil spring support fails & vehicle body may fall on tires.	84V-086 7/13/84			Recall
5/10/84	EA84-017	Allison seat warmers, overheat and burn up seat upholstery	84E-022 9/18/84			Recall
6/19/84 11/16/84 2nd Req.	EA84-019	1982 GM Chevrolet Camaro rear seat belts may be cut by anchor plates during a crash.		5/1/85		Closed
10/1/84	EA83-012	1977-1980 MG and Triumph seat belt retractors jam and can't be pulled out.	85V-059 5/2/85			Recall

BEST COPY AVAILABLE

RECALL REQUESTS
CY 1984
Page Number 2

LETTER DATE	EA NUMBER	SUBJECT	RECALL NUMBER & DATE	REEVALUATION & DATE CLOSED	CASE NUMBER & DATE OPENED	STATUS
10/9/84	EA84-028	1981-1982 GM diesel Engines equipped with Chevette rear brakes lockup under hard braking.				Pending
10/31/84	EA8-118	1975-1984 Ford F/E-350 light trucks rear dual wheels fall off.			C85-10 9/30/85	Case
10/30/84	EA84-035	1978-1984 Dolphin Mini-motorhomes rear suspension failures.	84V-156 11/14/84			Recall
12/5/84	EA83-018	1981-1983 Peugeot 505 power brake booster seal ring tears.		Closed 6/20/85		Closed
12/10/84 4/10/85 2nd req.	EA85-006	1984 BMW 318i idle speed control system malfunction produces excessive idle speed.	85V-058 4/30/85			Recall

RECALL REQUESTS
CY 1984
Page Number 3

LETTER DATE	EA NUMBER	SUBJECT	RECALL NUMBER & DATE	REEVALUATION & DATE CLOSED	CASE NUMBER & DATE OPENED	STATUS
12/27/84 2/6/85 2nd Req.	EA84-032	Neoplan model 808 bus (1) defroster unit fails, shorts out wiring and (2) transverse link and/or a frame failure may cause rear end shift or displacement.	85V-033 85V-032 3/22/85			Two Recalls

RECALL REQUESTS
CY 1985
Page Number 1

LETTER DATE	EA NUMBER	SUBJECT	RECALL NUMBER & DATE	REEVALUATION & DATE CLOSED	CASE NUMBER & DATE OPENED	STATUS
1/3/85	EA84-023	1982-1984 GM A-Cars rear brake lockup			C85-07 6/19/85	Case
1/16/85 3/25/85 2nd req.	EA84-006	1978-1981 GM "A" and "A" Special and 1982 "G" body upper control arm mounting bolts				Pending
1/23/85	EA85-007	1980-1981 Trailmobile semitrailers air brake hose failures.	85V-030 3/15/85			Recall
2/21/85	EA84-034	1982-1983 micro-mini Sandtana motorhomes built on Toyota chassis. Dual rear wheels may fall off.		Closed 9/24/85		Closed
2/21/85	EA84-034	1982-1984 micro-mini Sandtana motorhomes built on S-10 or S-15 chassis. Rear axle assembly is overloaded.		Closed 9/24/85		Closed
2/21/85 7/24/85 2nd Req.	EA85-005	1982-1984 micro-mini RBR motorhomes built on S-10 or S-15 chassis. Rear axle assembly is overloaded.	85V-101 8/1/85			Recall

212

RECALL REQUESTS
CY 1985
Page Number 2

LETTER DATE	EA NUMBER	SUBJECT	RECALL NUMBER & DATE	REEVALUATION & DATE CLOSED	CASE NUMBER & DATE OPENED	STATUS
2/21/85	EA85-005	1982-1983 Micro-mini RBR motorhomes built on a Toyota chassis. Dual rear wheels may fall off.		Closed 3/20/85		Closed
2/21/85	EA85-012	Micro-mini Keystone motorhomes built on a Toyota chassis. Dual rear wheels may fall off.		Closed 7/29/85		Closed
2/21/85	EA85-009	Micro-mini Four Seasons motorhomes built on a Toyota chassis. Dual rear wheels may fall off.		Closed 4/10/85		Closed
2/21/85	EA85-013	Custom and Commercial Wheel Company 14 inch dual rear wheels may not fit on Toyota hubs. Dual rear wheels may fall off.		Closed 9/20/85		Closed
2/21/85	EA85-001	Micro-mini Gardner Pacific (Sunrader) motorhomes built on a Toyota chassis. Dual wheels may fall off.				Pending
3/8/85 4/30/85	EA85-015	1976-1983 Mazda passenger vehicles. Idler arm corrosion.	85V-108 8/24/85			Recall

RECALL REQUESTS
CY 1985
Page Number 3

LETTER DATE	EA NUMBER	SUBJECT	RECALL NUMBER & DATE	REEVALUATION & DATE CLOSED	CASE NUMBER & DATE OPENED	STATUS
3/14/85	EA85-001	Micro-mini Gardner-Pacific motorhomes built on S-10 or S-15 chassis. Rear axle assembly is overloaded.				Pending
3/14/85	EA85-001	Micro-mini Sunrader motorhomes built on S-10 or S-15 chassis. Rear axle assembly is overloaded.				Pending
4/5/85	EA85-011	Micro-mini RV/Odyssey motorhomes built on a Toyota chassis. Dual rear wheels may fall off.				Pending
2/21/85	EA85-008	Micro-mini Ranger Motorhomes built on a Toyota chassis. Dual rear wheels may fall off.	85V-089 7/8/85			Recall
2/21/85	EA85-010	Micro-mini Huntsman motorhomes built on a Toyota chassis. Dual rear wheels may fall off.	85V-069 5/14/85			Recall
2/21/85	EA85-001	Micro-mini Sunrader motorhomes built on a Toyota chassis. Dual rear wheels may fall off.		Closed 3/12/85		Closed

RECALL REQUESTS
CY 1985
Page Number 4

LETTER DATE	EA NUMBER	SUBJECT	RECALL NUMBER & DATE	REEVALUATION & DATE CLOSED	CASE NUMBER & DATE OPENED	STATUS
2/21/85 7/30/85 2nd Req. 8/14/85 3rd Req.	EA85-005	Micro-mini RBR motorhomes equipped with Arrowcraft dual wheel adapter kits. Rear axle assembly is overloaded.	85V-111 9/9/85			Recall
2/21/85	EA85-014	Micro-mini Perris Valley motorhomes built on a Toyota chassis. Dual rear wheels may fall off.	85V-027 3/8/85			Recall
3/17/85	EA85-017	1984-1985 Diplomat and Executive motorhomes Carbon monoxide intrusion.	85V-038 4/2/85			Recall
4/2/85	EA85-019	Royal Truck Body dual rear wheels on Toyota truck vehicles. Dual rear wheels may fall off.		Closed 9/13/85		Closed
4/2/85	EA85-020	CMF Corporation dual rear wheels on Toyota truck vehicles. Dual rear wheel may fall off.		Closed 5/14/85		Closed
4/2/85 8/14/85	EA85-021	Deluxe Truck Body dual rear wheels on Toyota truck vehicles. Dual rear wheels may fall off.				Pending

RECALL REQUESTS
CY 1985
Page Number 5

LETTER DATE	EA NUMBER	SUBJECT	RECALL NUMBER & DATE	REEVALUATION & DATE CLOSED	CASE NUMBER & DATE OPENED	STATUS
4/2/85	EA85-022	Cook Body dual rear wheels on Toyota truck vehicles. Dual rear wheels may fall off.		Closed 5/14/85		Closed
4/2/85	EA85-023	Custom Fab dual rear wheels on Toyota truck vehicles. Dual rear wheels may fall off.		Closed 5/8/85		Closed
4/8/85	EA85-025	Century 200 1981-1983 infant car seats. Seatbelt buckle jams and sticks.	85E-019 5/22/85			Recall
4/8/85	EA85-024	1982-1984 Escort & Lynx vehicles. Rear seat belt retractors jam and lock.	85V-067 5/15/85			Recall
5/3/85	EA85-026	Mirage of Elkhart Micro-Mini motorhomes built on Chevrolet S-10 chassis. Rear axle assembly is overloaded.		Closed 6/20/85		Closed
7/19/85	EA85-032	Strick Trailers - tandem axles may separate.				Pending
7/26/85	EA85-033	Daytona wheels are overloaded when installed on van conversions.				Pending

LETTER DATE	EA NUMBER	SUBJECT	RECALL NUMBER & DATE	REEVALUATION & DATE CLOSED	CASE NUMBER & DATE OPENED	STATUS
7/30/85	EA85-034	Hyashi HR 304 wheels crack and fracture during testing.	85E-028 10/1/85			Recall
7/31/85	EA85-035	Arrowcraft adapters may fail.				Pending
8/5/85	PE85-55	Ravens Trailers, model 1R1D, defective inner cap nuts.				Pending
8/27/85	PE85-59	Alfa Leisure fifth wheel trailer kingpin fails.	85W-117 9/16/85			Recall
9/4/85	PE85-47	1981-1983 GM C- and E-body passenger cars with electrical shorts cause door fires.				Pending
9/13/85	EA85-044	Inner cap nut failures on Western trailers equipped with aluminum wheels.				Pending
9/20/85	EA85-008	Ranger Micro-Mini motorhomes on Toyota chassis are overloaded when shipped.				Pending

GAO

United States
General Accounting Office
Washington, D.C. 20548

Comptroller General
of the United States

B-222021

June 10, 1986

The Honorable John D. Dingell
Chairman, Subcommittee on Oversight
and Investigations
Committee on Energy and Commerce
House of Representatives

The Honorable Timothy E. Wirth
Chairman, Subcommittee on Telecommunications,
Consumer Protection, and Finance
Committee on Energy and Commerce
House of Representatives

This report, prepared in response to your February 1985 requests, discusses the December 30, 1980, agreement between Ford Motor Company and the Department of Transportation settling the Department's investigation of an alleged defect in certain transmissions used in 1970-79 model year Fords.

The report also examines various aspects of the National Highway Traffic Safety Administration's handling of the case, including (1) the Administration's and Ford's actions to meet the requirements of the settlement agreement and to monitor the settlement's effectiveness; (2) the Administration's actions to increase public awareness of the issue; and (3) the Administration's analysis and presentation of accident statistics, particularly fatality statistics, related to the case.

We are sending copies of the report to appropriate House and Senate committees; interested Members of Congress; the Secretary of Transportation; the Director, Office of Management and Budget; and the President of Ford Motor Company. We will also make copies available to others upon request.

Charles A Bowsher

Charles A. Bowsher
Comptroller General
of the United States

EDITOR'S NOTE: This report is not being printed in this publication. It is available at the U.S. General Accounting Office, GAO/RCED-86-52, June 1986 entitled "Auto Safety, Effectiveness of Ford Trans mission Settlement Still at Issue.

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. [illegible]

June 10, 1986

B-222021

The Honorable John D. Dingell
Chairman, Committee on Energy and Commerce
House of Representatives

Dear Mr. Chairman:

This opinion addresses the legal issues raised by your February 6, 1985, request that we review the actions of the National Highway Traffic Safety Administration (NHTSA) in connection with the alleged tendency of automatic transmissions in certain 1966-1979 Ford model vehicles to slip from "park" to "reverse." At meetings with your staff on May 16, 1985, and July 15, 1985, we reported our preliminary views on some of these issues. As requested, this letter confirms the analysis then provided. A separate report, "Auto Safety-Effectiveness of Ford Transmission Settlement Still at Issue," RCED-86-52, also issued to you today, addresses the other issues raised by your request.

Background

A detailed discussion of the facts is contained in our report. A summary of relevant information follows.

On October 18, 1977, NHTSA opened an investigation of Ford vehicles equipped with certain allegedly defective automatic transmissions. The investigation was opened on the basis of 31 reports of Ford vehicles which allegedly failed to hold or engage in park, resulting in the unexpected movement of the vehicle and sometimes in fatalities, injuries, and property damage. On June 9, 1980, NHTSA made an initial determination, pursuant to section 152 of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. § 1412, that a safety defect existed involving model year 1970-79 Ford vehicles. In August 1980, NHTSA held a public meeting to provide Ford an opportunity to establish that a defect did not exist.

On October 3, 1980, the Administrator of NHTSA (Administrator) recommended that the Secretary of Transportation (Secretary) declare a final determination of defect pursuant to 15 U.S.C § 1412(b). However, the Secretary never made a final determination of defect. Rather, the Secretary entered into a settlement agreement with Ford on December 31, 1980.

Following the settlement agreement, the Center for Auto Safety (CFAS) filed suit in the United States District Court for the District of Columbia challenging the Secretary's decision to settle. The district court held that the Secretary did not act arbitrarily or capriciously or abuse his discretion in deciding to settle.[1] The Court of Appeals for the District of Columbia Circuit affirmed.[2]

Pursuant to 15 U.S.C. § 1410a, CFAS has petitioned NHTSA on three occasions--most recently in March 1985--to initiate a defect investigation into the Ford transmissions. NHTSA has denied all three petitions. On September 9, 1985, CFAS challenged in district court the most recent denial of its petition.[3] The court, in an April 16, 1986 decision, refused to overturn NHTSA's denial.

Question 1: Considering that NHTSA and Ford entered into a settlement agreement on December 30, 1980, and that the case has now been closed for more than 4 years, can NHTSA now "reopen" the case?

Answer 1: Under section 152 of the Act, 15 U.S.C. § 1412, the Secretary is to notify a manufacturer of motor vehicles of an initial determination that the vehicles contain a safety-related defect. The notification is to include all information upon which the initial determination is based. Id. The Secretary must then afford the manufacturer an opportunity to establish that no defect exists or that the alleged defect does not relate to motor vehicle safety. Id. If, after considering the manufacturer's presentation, the Secretary remains of the opinion that a safety-related defect exists, he must order the manufacturer both to notify owners, purchasers, and dealers respecting the defect and to remedy the defect. 15 U.S.C. § 1412(b). In this case, while the then-Administrator notified Ford in June 1980 of an initial determination of defect, neither she nor the Secretary ever issued a final determination of defect. See Center for Auto Safety, Inc. v. Lewis, 685 F.2d 656, 662 (D.C. Cir. 1982).

---

[1] Center for Auto Safety, Inc. v. Lewis, Civ. Action No. 81-0550 (D.D.C. 1981).

[2] Center for Auto Safety, Inc. v. Lewis, 685 F.2d 656 (D.C. Cir. 1982).

[3] Center for Auto Safety, Inc. v. Dole, Civ. Action No. 85-2861 (D.D.C. filed Sept. 9, 1985).

The answer to whether NHTSA can reopen a case that has been settled depends in part on what is meant by the term "reopen". Your request raised the question in the context of the recent petition by CFAS, which you characterized as seeking to "reopen" the Ford transmission case.

Section 124 of the Act, 15 U.S.C. § 1410a, permits any interested persons to petition the Secretary "to commence a proceeding to determine whether to issue an order pursuant to section 1412(b) [for notification and remedy]." On the basis of section 124, CFAS petitioned NHTSA "to open an expedited formal defect investigation into the continued incidence of accident, injury and death resulting from" the alleged defect. The CFAS petition, as we read it, calls for a new investigation, rather than a revival of the former investigation.

You suggest that "NHTSA could not reopen the old investigation at the stage it was closed, and expand it to cover a new group of vehicles," and that adopting CFAS' request would circumvent the statutory process for initiating an investigation that was apparently closed several years ago. We agree that "reopening" the former investigation--in the sense of resuming the proceeding which NHTSA agreed in 1980 to discontinue, at the stage at which it was discontinued--would raise significant issues of compliance with the procedural requirements of the Act.

As noted above, section 152(a) requires the Secretary to notify a manufacturer of all information upon which his initial determination is based and afford the manufacturer an opportunity to present its views. And, as the Administrator of NHTSA recently observed in denying CFAS' most recent petition, the settlement agreement was premised on the Secretary's agreement to close the investigation and not to seek additional remedies against Ford in the absence of new information. See Letter from Administrator, NHTSA, to Clarence M. Ditlow, CFAS, dated July 12, 1985.

If NHTSA were now to "reopen" the investigation, presumably on the basis of additional facts as envisioned by the settlement agreement, NHTSA must comply with the procedural requirements of section 152. If NHTSA were to "reopen" the investigation without "additional facts," Ford could seek judicial relief from NHTSA's breach of the settlement agreement.

However, if there is new information pertaining to Ford vehicles that was not considered in the pre-settlement investigation, both the settlement agreement and the Act authorize NHTSA to investigate and decide whether to make a determination of defect. The agreement expressly reserves NHTSA's right to "take whatever action may be required under the [Act] and warranted by the development of its knowledge in this matter based upon additional facts". See also 15 U.S.C. §§ 1401, 1411, 1412, and 1418, permitting NHTSA to determine, through any means available to it, whether a safety-related defect exists. Were NHTSA to "reopen" the investigation on the basis of new evidence, section 152(a) clearly envisions that NHTSA will notify the manufacturer of all information upon which the initial determination of a defect is based and provide the manufacturer an opportunity to present data, views and argument to rebut the initial determination.

You also asked whether, assuming NHTSA were now to make a final determination of defect and order a recall of Ford vehicles, NHTSA could reach cars more than 8 years old on the effective date of the recall order. NHTSA may not order a manufacturer to remedy at its expense a defect in cars or replacement equipment more than 8 years old. No other procedures or remedies under the Act are affected. 15 U.S.C. § 1414(b).

Question 2: Under the terms of the settlement agreement, what are (1) NHTSA's and (2) Ford's legal responsibilities? Further, what is required of Ford and NHTSA relative to reporting accidents and monitoring implementation of the settlement agreement?

Answer 2: The settlement agreement consists of two letters, one from Ford to the Secretary, and one from the Secretary to Ford, both dated December 30, 1980, supplemented by a third letter dated January 6, 1981, from Ford to the Office of Defects Investigations, NHTSA. Under the settlement agreement, NHTSA agreed to close its investigation into whether Ford automatic transmissions contained a defect. Ford in turn agreed to mail to the owners of all vehicles covered by NHTSA's June 9, 1980, initial determination of a defect: 1) a letter containing a reminder of the possible hazards which may result if a vehicle is left unattended without being immobilized and of the "common sense steps" drivers can take to prevent unexpected vehicle movement; and 2) a self-sticking label listing important precautionary reminders. The letter to owners urges them to place the label in a conspicuous place in their motor vehicle.

Also, the settlement agreement conditioned NHTSA's closure of the case on receipt of the report described by 15 U.S.C. § 1414(c) and 49 C.F.R. Part 573. Such a report shall include: (1) an identification of the total number, and the percentage of, vehicles potentially containing the defect; (2) a description of the defect; (3) a chronology of all principal events that were the basis for the determination that the defect related to motor vehicle safety; and (4) a description of the manufacturer's program for remedying the defect. In agreeing to submit this report, Ford stipulated that "neither the contents of this [report] nor the Ford actions noted herein in any sense constitute an admission by Ford of a safety-related defect * * * ."

It is our understanding that Ford agreed to follow the time and method of notification set out in 15 U.S.C. §§ 1413(b) and (c) in notifying the owners, without in any sense agreeing or admitting that such actions indicated a safety-related defect. However, since the Secretary of Transportation had made no final determination of defect under 15 U.S.C. § 1412(b), Ford was not obligated by the statute to follow these procedures. See 15 U.S.C. §§ 1413(b) and (c).

Nothing in the agreement expressly addresses whether either Ford or NHTSA must report accidents and monitor implementation of the agreement. However, NHTSA's reservation of its right to "take whatever action may be required under the [Act] and warranted by the development of knowledge in this matter based upon additional facts" suggests that NHTSA intended to reserve the right to monitor implementation of the agreement. Also, DOT's letter to Ford states that "if Ford should develop such [additional] facts, we fully expect that Ford will immediately bring them to [NHTSA's] attention * * * ."

Of course, NHTSA's right to monitor does not depend on the agreement. While the Act does not specifically obligate NHTSA to track all accidents, NHTSA has authority to determine, through any means available to it, whether a safety-related defect exists. See 15 U.S.C. §§ 1401, 1411, 1412, and 1418. For example, under 15 U.S.C. § 1412(a), the Secretary is authorized to determine whether a defect exists "through testing, inspection, investigation, or research carried out pursuant to this chapter, or examination of communications under section 1418(a)(1) of this title,[5] or otherwise * * * ." Moreover, interested persons may petition the Secretary to commence a proceeding for the issuance of an order under section 152(b). 15 U.S.C. § 1410a.

Accordingly, and as recognized by the reservation of its right "to take whatever action may be required under the [Act] and warranted by the development of its knowledge in this matter based upon additional facts," NHTSA may track accidents to determine whether they involve "additional facts" indicative of a defect. Also, Ford, as a manufacturer, must notify the Secretary if it obtains knowledge of such facts that indicate any of its motor vehicles contain a defect. See 15 U.S.C. § 1411, December 30, 1980, DOT letter to Ford.

Question 3: The settlement agreement provided that Ford would send a letter to owners of the appropriate model-year vehicles addressing the danger of leaving a car with the engine running and include a reminder label to that effect. The following questions relate to the reminder label.

a. Does NHTSA have the authority to require that individual automobile owners display the label?

b. When a vehicle covered by the agreement is traded in and/or sold by a used car dealer, but the vehicle does not display the label, does (1) NHTSA, (2) any other federal agency such as the Federal Trade Commission, (3) individual state agencies, or (4) Ford have the authority to require that automobile dealers affix the label?

c. What responsibility does Ford have under the settlement agreement to assure that its dealers place the labels on vehicles it sells, takes in trade, or services that do not already display them?

Answer 3: The defect discovery and notification provisions of the Act authorize NHTSA to require certain actions of motor vehicle manufacturers, not individual car owners or dealers. Under section 152 of the Act, 15 U.S.C. § 1412, NHTSA may order a manufacturer to notify owners, purchasers and dealers respecting vehicles determined to have a safety-related defect. Section 153, 15 U.S.C. § 1413, describes the statutory requirements for content, time and method of notification which a manufacture must follow when notifying owners and dealers. However, neither sections 152 nor 153, nor the Act in general, authorize NHTSA to require individual owners or dealers to affix the label to a motor vehicle. Moreover, we are not aware that any state or federal agency has moved to require that used car dealers affix the reminder label Ford mailed to owners of cars covered by the settlement agreement.

---

[5] Section 1418(a)(1) requires a manufacturer to furnish to the Secretary a copy of all its communications to owners, purchasers, and dealers regarding any defects.

Ford advises us that, under its franchise agreements, it could not require franchised dealers (or, a fortiori, independent used car dealers) to affix the reminder label to used cars or to cars they service. (Ford could have imposed such a requirement on the relatively few dealerships which it controls but did not do so since Ford does not belisve a defect exists, nor, of course, was Ford required to do so.)

To discharge its responsibilities under the settlement agreement, Ford needed only to mail the letters and labels to the owners of all vehicles covered by NHTSA's June 9, 1980, initial determination of a defect (and to make the report called for by the December 30 DOT letter to Ford). (See Answer 2, above.) Under the settlement agreement, Ford did not obligate itself to require individual owners or its dealers to affix the label to a motor vehicle.

Question 4: In its review of the Secretary's decision to settle with Ford, the United States Court of Appeals for the District of Columbia Circuit offered its view on NHTSA's ability to prove a defect existed and the effectiveness of the reminder label. What is the legal significance and import of the court's views on (1) proving a defect existed and (2) the effectiveness of the reminder label? Are the court's statements still pertinent today?

Answer 4: In Center for Auto Safety, Inc. v. Lewis, 685 F.2d 656, 663-664 (D.C. Cir. 1982), the Court of Appeals held that the Secretary of Transportation did not act arbitrarily or capriciously or abuse his discretion in entering into the settlement agreement. The Court of Appeals pointed out several reasons why "the Secretary's decision to settle cannot be termed irrational or arbitrary." Id. at 663. First, the court observed that the existence of a defect had not been conclusively established and, according to the NHTSA Associate Administrator for Enforcement, "major new investigative efforts" would probably have been necessary to establish that a defect existed. Id. Even if NHTSA had issued a final determination of defect, Ford would probably have challenged it. Because the interaction between driver and vehicle seemed a critical factor in the transmission malfunctions, the court stated that the Department of Transportation would have been confronted with the difficult task of establishing the existence of a defect. Id. The court also remarked that the Ford investigation was a drain on the resources of the Office of Defects Investigations. And as a final practical consideration, since an enforcement action probably would have lasted at least 4 years, the number of potentially defective cars purchased within the 8-year limitations period would decrease significantly as these cars would wear out and be taken off the road. Id.

With respect to CFAS' contention that the notification letters and reminder labels will be ineffective, the Court of Appeals stated that:

> "Both common sense and the statements of NHTSA officials indicate that the likelihood of such accidents can be substantially reduced if the driver follows instructions by shutting off the engine and setting the parking brake before leaving the vehicle."

The court made its statements about the difficulty of proving that a defect existed and the effectiveness of the reminder label to support its limited holding that the Secretary of Transportation did not abuse his discretion in entering into the settlement agreement. That is, the court was not holding that the Secretary's decision was the best one or that the court necessarily agreed with it. Rather, the court held only that, as a matter of law, the Secretary had a rational basis in the record before him for doing what he did. Thus, the court's statements cannot be viewed as conclusive concerning whether a defect in fact does or does not exist and whether the settlement agreement was an effective solution to the alleged defect. Although the court's conclusions or remarks would not preclude NHTSA from opening a new investigation into whether the Ford transmissions are defective should additional new information suggest the need, they certainly highlight the practical considerations and legal hurdles that any NHTSA decision to initiate a new defects investigation into this matter would have to address.

Moreover, the court's statements about the effect of the 8-year period are significant. The last Ford vehicles to have the alleged defect are its 1979 models. Thus, probably sometime in 1987, as a result of the 8-year limit, 15 U.S.C. § 1414(a)(4), Ford could not be legally responsible for remedying without charge the alleged defect in any more of these model year vehicles. Further, should Ford challenge a final determination of defect, an enforcement action by the Department of Transportation could last several years, meaning that, for practical purposes, few pre-1980 Ford models would still be on the road even if the Department of Transportation would ultimately prevail in an enforcement action and order a recall.

Question 5: What legal responsibility does NHTSA have to investigate post-settlement fatalities involving vehicles covered by the settlement agreement?

Answer 5: Nothing in the settlement agreement or the Act expressly obligates NHTSA to investigate such fatalities. However, as discussed in answer to Question 2, above, NHTSA specifically reserved the right to take whatever action may be required under the Act and warranted by development of its knowledge based upon additional facts. This would include monitoring this matter to determine, through any means available to it, whether a safety-related defect exists. See 15 U.S.C. §§ 1401, 1411, 1412, and 1418. Accordingly, and as recognized by the reservation of its right in the settlement agreement, NHTSA may investigate post-settlement fatalities involving vehicles covered by the agreement to determine whether "additional facts" exist to support the initiation of a new defect investigation.

Question 6: Following the settlement, NHTSA made "commitments" to monitor the settlement agreement with Ford. These commitments were made during oral argument on Center for Auto Safety v. Lewis, to Judge Edwards of the United States Court of Appeals, District of Columbia Circuit, and reaffirmed by NHTSA's Acting Administrator in a letter to Chairman Timothy E. Wirth, Subcommittee on Telecommunications, Consumer Protection and Finance, House Committee on Energy and Commerce, on June 3, 1983. In an October 3, 1983, letter to Chairman Wirth, NHTSA's Administrator-Designate reaffirmed a view expressed in oversight hearings in July 1983 before Chairman Wirth's Subcommittee that NHTSA could do more to inform the public about the safety hazards of leaving any car with its engine running. These commitments raise several questions.

a. Are the NHTSA commitments to (1) the court and (2) Chairman Wirth legally binding?

b. What latitude does NHTSA have to (1) discontinue monitoring and (2) not pursue a public information program given its commitments?

Answer 6: NHTSA's "commitments" do not appear to be legally binding. Typically, courts speak through judgments and orders, and the courts' powers and process are generally available to enforce such judgments and orders. However, neither the district court nor the court of appeals judgment, orders, or opinions imposed on NHTSA an obligation to continue monitoring and to pursue a public information program. Viewed from this perspective, NHTSA's commitment, in open court, is not legally binding although the District Court judge is entitled to expect that the agency will honor such an agreement. Similarly, we do not think that "commitments" made in oversight hearings are legally binding in the sense that Congress can compel an agency, through the judicial process, to act in accordance with a commitment.

As discussed in answers 2 and 5 above, NHTSA has authority to determine whether additional facts indicate the existence of a safety-related defects in Ford transmissions. Wholly apart from any commitments NHTSA may have made, continued monitoring by NHTSA, if deemed necessary to carry out its statutory functions, would be required. As discussed in more detail in the accompanying report, NHTSA has taken various steps consistent with its commitments to the court and to Congressman Wirth's Subcommittee.

We trust the foregoing information will be useful to you.

Sincerely yours,

Charles A. Bowsher

Comptroller General
of the United States